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THE

CONSTITUTIONAL HISTORY

OF

ENGLAND

FROM THE

ACCESSION OF HENRY VII.

TO THE

DEATH OF GEORGE II.

86817

BY

HENRY HALLAM, LL.D., F.R.S.

WITH

ADDENDUM,

THE ESSAY OF

LORD MACAULAY

ON

HALLAM'S CONSTITUTIONAL HISTORY OF ENGLAND.

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PREFACE.

THE origin and progress of the English Constitution, down to the extinction of the house of Plantagenet, formed a considerable portion of a work published by me some years since, on the history, and especially the laws and institutions, of Europe during the period of the Middle Ages. It had been my first intention to have prosecuted that undertaking in a general continuation; and when experience taught me to abandon a scheme projected early in life with very inadequate views of its magnitude, I still determined to carry forward the constitutional history of my own country, as both the most important to ourselves and the most congenial to my own studies and habits of mind.

The title which I have adopted appears to exclude all matter not referrible to the state of government, or what is loosely denominated the constitution. I have, therefore, generally abstained from mentioning, except cursorily, either military or political transactions, which do not seem to bear on this primary subject. It must, however, be evident, that the constitutional and general history of England, at some periods, nearly coincide; and I presume that a few occasional deviations of this nature will not be deemed unpardonable, especially where they tend, at least indirectly, to illustrate the main topic of inquiry. Nor will the reader, perhaps, be of opinion that I have forgotten my theme in those parts of the following work which relate to the establishment of the English church, and to the proceedings of the state with respect to those who have dissented from it; facts certainly belonging to the history of our constitution, in the large sense of the word, and most important in their application to modern times, for which all knowledge of the past is principally valuable. Still less apology can be required for a slight verbal inconsistency with the title of these volumes in the addition of two supplemental chapters on Scotland and Ireland. This indeed I mention less to obviate a criticism, which possibly might not be suggested, than to express my regret that, on account of their brevity, they are both so disproportionate to the interest and importance of their subjects.

During the years that, amidst avocations of different kinds, have been occupied in the composition of this work, several others have been given to the world, and have attracted considerable attention, relating particularly to the periods of the Reformation and of the civil wars. It seems necessary to mention that I have read none of these, till after I had written such of the following pages as treat of the same subjects. The three first chapters indeed were finished in 1820, before the appearance of those publications which have led to so much controversy as to the ecclesiastical history of the sixteenth century; and I was equally unacquainted with Brodie's "Hist. of Brit. Em. from the Accession of Ch. I. to the Restoration," while engaged myself on that period. I have, however, on a revision of the present work, availed myself of the valuable labours of recent authors, especially Lingard and Brodie; and in several of my notes I have sometimes supported myself by their authority, sometimes taken the liberty to express my dissent; but I have seldom thought it necessary to make more than a few verbal modifications in my text.

It would, perhaps, not become me to offer any observations on these contemporaries; but I cannot refrain from bearing testimony to the work of a distinguished foreigner, M. Guizot, "Hist. de la Rév. d'Angleterre, depuis l'Avènement de Ch. I. jusqu'à la Chute de Jacques II.," the first volume of which was published in 1826. The extensive knowledge of M. Guizot, and his remarkable impartiality, have been displayed in his collection of memoirs illustrating that part of English history; and I am disposed to believe that if the rest of his undertaking shall be completed in as satisfactory a manner as the first volume, he will be entitled to the preference above any one, perhaps, of our writers, as a guide through the great period of the seventeenth century.

In terminating the Constitutional History of England at the accession of Geo. III., I have been influenced by unwillingness to excite the prejudices of modern politics, especially those connected with personal character, which extend back through at least a large portion of that reign. It is indeed vain to expect that any comprehensive account of the two preceding centuries can be given without risking the disapprobation of those parties, religious or political, which originated during that period; but as I shall hardly incur the imputation of being the blind zealot of any of these, I have little to fear, in this respect, from the dispassionate public, whose favour, both in this country and on the Continent, has been bestowed on my former work, with a liberality less due to any literary merit it may possess, than to a regard for truth, which will, I trust, be found equally characteristic of the present.

HENRY HALLAM.

"*Times*," *Monday, January 24th*, 1859.

THE constellation of writers who shed a radiance on the early part of the present century is fast vanishing away. Not the least remarkable of these, the historian of the Middle Ages of the Revival of Letters, and of the English Constitution. Henry Hallam, died on Saturday last, at the great age of eighty-one. He has left but few of his companions behind him, and, more than this, it was his bitter fate to outlive those who should have come after him, to see two souls of rare promise, who should have preserved his name, go before him, the pride of his life snatched from his eyes, the delight of his old age laid low in the dust of death. One of these was that Arthur Henry Hallam, who died in 1833, and to whom Tennyson dedicated the remarkable series of poems, which have been published under the title of *In Memoriam*. The bereaved father was broken-hearted for his son, and spoke of his hopes on this side the tomb being struck down for ever. A year or two afterwards when he produced the Introduction to the Literature of Europe, there appeared a most affecting passage in the preface, which to those who knew him suggested the hidden grief that was preying on his mind. His hopes, however, revived as his younger son grew up to manhood and seemed to promise not less than the accomplished youth whom his father had regarded, and not without reason, as an only one

without a fellow. But this son also, Henry Fitzmaurice Hallam, was taken from him shortly after he had been called to the bar in 1850, and the poor bereaved father buried him in Clevedon Church, in Somersetshire, by the side of his brother, and his sister, and his mother.

Among historians we doubt whether there is to be found one equal to Mr. Hallam in impartiality. There have been historians as erudite as he, not less acute, more inspiring as thinkers, more elegant as writers; but for stern justice he is probably without a rival. His unflinching integrity, his subjugation of personal prejudice, his determination to speak the truth under all circumstances, is one of the rarest things in literature. This perfect frankness never takes him in the form, which it assumes in minds less accurately balanced, of an impatient desire to speak unpalatable truths in season and out of season. Perhaps there never was a critic who was so little of an egotist, and whose judgment was so little swayed by personal feelings, either of regard for himself or of regard for others. Here, indeed, one might detect a want in his character as a writer,—a want which might scarcely have been observed when he began to write, but which became apparent in his later years, when the tendencies of age had introduced a new style of history and of criticism. He belonged to that school which in history deals with principles rather than with persons, and in criticism deals with poems rather than with poets, books rather than with authors. The tendency of our literature of late years has been in a direction entirely opposite, and would seem to represent principles as subordinate to the personages by whom they are illustrated, books as but secondary to the authors from whose pens they have flowed; a tendency, in fact, which would render biography the base of history, the base of criticism, the base even of philosophy. So strongly has this tendency made itself manifest in our later literature, that the peculiarity of Hallam's manner appears in the most startling contrasts; and those who have been nurtured under the more recent system may not be able to enjoy the dry details and impersonal reasonings of the old school. His works are more for the student than the idle reader. The student finds in them a mine of wealth—unbounded erudition, accuracy that has never been impugned, a wise judgment that almost always leaves one satisfied, a brevity of statement that prevents exhaustion, and an elegance of style that draws him along. The reader for mere pleasure would never go through one of Mr. Hallam's works; and yet in all his writings there are passages instinct with fine feeling which might well fix the attention of the most desultory. Never writing for effect, but conscientiously and laboriously striving to elicit the bare truth, this great historian, whose works are as valuable as any of the same kind that have ever been written, often attains without seeking it an effect which the masters of popular applause might envy.

There are few literary men who have reached an eminence to be compared with that of Mr. Hallam, of whose personal history so little is known to the great public. That he was born in or about 1778, that he was educated at Eton, that from Eton he passed to Christ Church, Oxford, and that at this University he took his degree in 1799, are almost all the facts of his early life, which have been published. After leaving the university, he took up his residence in London, joined him-

self to the Whigs, and acquired his first reputation as a contributor to the great Whig review, established in the northern metropolis. It was on account of his supposed connexion with the *Edinburgh Review* that he incurred the wrath of Byron, who, in that satire in which he, first of all, showed his power, referred in ironical terms to "the classic Hallam, much renowned for Greek." Greek, however, was not the peculiar study of our historian, who set himself the task of learning all the European languages of importance, as the stepping-stone to an acquaintance with the state of Europe during the Middle Ages. He quietly settled down to his work, marrying in the meantime, and in 1811, rejoicing in the birth of his little Arthur, who was such a marvel of a child that at the age of seven, he learned to read Latin with fluency in a year. It was amid this domestic happiness and the repose which it provided that, in 1818, he at length gave to the world the first and perhaps the greatest of his works, the *View of the State of Europe during the Middle Ages*—a work which, although somewhat expensive and by no means adapted to the popular taste, has gone through a dozen editions. In every page of this history, we are struck with the enormous industry and the conscientiousness of the writer, which in union with his sagacity of thought and pith of composition, have rendered every work produced by him standard of its kind. He waited nine years, and then gave to the world his *Constitutional History of England, from the Accession of Henry VII. to the death of George II.* Nothing can be more masterly than the manner in which he has here traced the history of the English constitution from its first faint beginnings to its perfect development. It is a vast treasury of political thought, an armoury of political facts; in itself the Magna Charta of our liberty and our rights, which bears the sign-manual, not of kings or their ministers, but of the Muse of History. After these publications Mr. Hallam turned to literary history, preparing to write a full account of the revival of letters, and how literature came to be cultivated in the vernacular languages of Europe.

If it be true of the poets that they learn in suffering what they teach in song, it is not less true of the critics, that a great sorrow wonderfully opens the eyes and alters the views, makes the rough places smooth and the dark places clear. There is more of sentiment in Mr. Hallam's history of our early literature than persons acquainted only with his previous works would have been disposed to give him credit for. While we have the same industry and research, the same acute insight and conscientious judgment, which were so conspicuous in his political histories, we have also a smypathy with all that is refined in taste and good feeling, with all those touches of nature that make the whole world kin, which is a new manifestation of his character. If any of his works is likely to become popular it is this, which is likewise the best of all critical guides for those who wish to pick their way through the labyrinth of European literature. To none of his works could we point more confidently than to this for evidence, that he who has now gone from among us full of years and of honour was a good and a great man, genial in his nature, wise in judgment, truthful to the last degree, and doing with might whatsoever his hand found to do.

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THE

CONSTITUTIONAL HISTORY OF ENGLAND,

FROM

HENRY VII. TO GEORGE II.

CHAPTER I.

ON THE ENGLISH CONSTITUTION FROM HENRY VII. TO MARY.

Ancient Government of England—Limitations of Royal Authority—Difference in the effective Operation of these—Sketch of the State of Society and Law—Henry VII.—Statute for the Security of the Subject under a King de facto*—Statute of Fines—Discussion of its Effect and Motive—Exactions of Money under Henry VII.—Taxes demanded by Henry VIII.—Illegal Exactions of Wolsey in* 1523 *and* 1525*—Acts of Parliament releasing the King from his Debts—A Benevolence again exacted—Oppressive Treatment of Reed—Severe and unjust Executions for Treason—Earl of Warwick—Earl of Suffolk—Duke of Buckingham—New Treasons created by Statute—Executions of Fisher and More—Cromwell—Duke of Norfolk—Anne Boleyn—Fresh Statutes enacting the Penalties of Treason—Act giving Proclamations the Force of Law—Government of Edward VI.'s Counsellors—Attainder of Lord Seymour and Duke of Somerset—Violence of Mary's Reign—The House of Commons recovers Part of its independent Power in these two Reigns—Attempt of the Court to strengthen itself by creating new Boroughs—Causes of the High Prerogative of the Tudors—Jurisdiction of the Council of Star-Chamber—This not the same with the Court erected by Henry VII.—Influence of the Authority of the Star-Chamber in enhancing the Royal Power—Tendency of religious Disputes to the same End.*—pp. 17–54.

THE government of England, in all times recorded by history, has been one of those mixed or limited monarchies which the Celtic and Gothic tribes appear universally to have established, in preference to the coarse despotism of eastern nations, or to the more artificial tyranny of Rome and Constantinople, or to the various models of republican polity which were tried upon the coasts of the Mediterranean Sea. It bore the same general features, it belonged, as it were, to the same family, as the governments of almost every European state, though less

resembling, perhaps, that of France than any other. But, in the course of many centuries, the boundaries which determined the sovereign's prerogative and the people's liberty or power having seldom been very accurately defined by law, or at least by such law as was deemed fundamental and unchangeable, the forms and principles of political regimen in these different nations became more divergent from each other, according to their peculiar dispositions, the revolutions they underwent, or the influence of personal character. England, more fortunate than the rest, had acquired in the fifteenth century a just reputation for the goodness of her laws and the security of her citizens from oppression.

This liberty had been the slow fruit of ages, still waiting a happier season for its perfect ripeness, but already giving proof of the vigour and industry which had been employed in its culture. I have endeavoured, in a work of which this may in a certain degree be reckoned a continuation, to trace the leading events and causes of its progress. It will be sufficient in this place briefly to point out the principal circumstances in the polity of England at the accession of Henry VII.

The essential checks upon the royal authority were five in number.— 1. The king could levy no sort of new tax upon his people, except by the grant of his parliament, consisting as well of bishops and mitred abbots, of lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house. 2. The previous assent and authority of the same assembly was necessary for every new law, whether of a general or temporary nature. 3. No man could be committed to prison but by a legal warrant specifying his offence; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of gaol-delivery. 4. The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offence was alleged to have occurred, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision. 5. The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in an action for damages, to be assessed by a jury, or, in some cases, were liable to criminal process; nor could they plead any warrant or command in their justification, not even the direct order of the king.

These securities, though it would be easy to prove that they were all recognised in law, differed much in the degree of their effective operation. It may be said of the first, that it was now completely established. After a long contention, the kings of England had desisted for near a hundred years from every attempt to impose taxes without consent of parliament; and their recent device of demanding benevolences, or half-compulsory gifts, though very oppressive, and on that account just abolished by an act of Richard, the late usurper, was in effect a recognition of the general principle, which it sought to elude rather than transgress.

The necessary concurrence of the two houses of parliament in legis-

lation, though it could not be more unequivocally established than the former, had in earlier times been more free from all attempt or pretext of encroachment. We know not of any laws that were ever enacted by our kings without the assent and advice of their great council; though it is justly doubted whether the representatives of the ordinary freeholders, or of the boroughs, had seats and suffrages in that assembly during seven or eight reigns after the conquest. They were, however, ingrafted upon it with plenary legislative authority; and if the sanction of a statute were required for this fundamental axiom, we might refer to one in the 15th of Edward II. (1322), which declares, that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."[1]

It may not be impertinent to remark in this place, that the opinion of such as have fancied the royal prerogative under the houses of Plantagenet and Tudor to have had no effectual or unquestioned limitations, is decisively refuted by the notorious truth, that no alteration in the general laws of the realm was ever made, or attempted to be made, without the consent of parliament. It is not surprising that the council, in great exigency of money, should sometimes employ force to extort it from the merchants, or that servile lawyers should be found to vindicate these encroachments of power. Impositions, like other arbitrary measures, were particular and temporary, prompted by rapacity, and endured through compulsion. But if the kings of England had been supposed to enjoy an absolute authority, we should find some proofs of it in their exercise of the supreme function of sovereignty, the enactment of new laws. Yet there is not a single instance, from the first dawn of our constitutional history, where a proclamation, or order of council, has dictated any change, however trifling, in the code of private rights, or in the penalties of criminal offences. Was it ever pretended that the king could empower his subjects to devise their freeholds, or to levy fines of their entailed lands? Has even the slightest regulation as to judicial procedure, or any permanent prohibition, even in fiscal law, been ever enforced without statute? There was, indeed, a period, later than that of Henry VII., when a control over the subject's free right of doing all things not unlawful, was usurped by means of proclamations. These, however, were always temporary, and did not affect to alter the established law. But though it would be difficult to assert that none of this kind had ever been issued in rude and irregular times, I have not observed any under the kings of the Plantagenet name, which evidently transgress the boundaries of their legal prerogative.

The general privileges of the nation were far more secure than those of private men. Great violence was often used by the various officers

[1] This statute is not even alluded to in Ruffhead's edition, and has been very little noticed by writers on our law or history. It is printed in the late edition, published by authority, and is brought forward in the Report of the Lords' Committee, on the dignity of a Peer (1819), p. 282. Nothing can be more evident than that it not only establishes by a legislative declaration the present constitution of parliament, but recognises it as already standing upon a custom of some length of time.

of the crown, for which no adequate redress could be procured; the courts of justice were not strong enough, whatever might be their temper, to chastise such aggressions; juries, through intimidation or ignorance, returned such verdicts as were desired by the crown; and, in general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws.

The peers alone, a small body, varying from about fifty to eighty persons, enjoyed the privileges of aristocracy; which, except that of sitting in parliament, were not very considerable, far less oppressive. All below them, even their children, were commoners, and, in the eye of the law, equal to each other. In the gradation of ranks, which, if not legally recognised, must still subsist through the necessary inequalities of birth and wealth, we find the gentry, or principal landholders, many of them distinguished by knighthood, and all by bearing coat armour, but without any exclusive privilege; the yeomanry, or small freeholders and farmers, a very numerous and respectable body, some occupying their own estates, some those of landlords; the burgesses and inferior inhabitants of trading towns; and, lastly, the peasantry and labourers. Of these, in earlier times, a considerable part, though not perhaps so very large a proportion as is usually taken for granted, had been in the ignominious state of villenage, incapable of possessing property but at the will of their lords. They had, however, gradually been raised above this servitude; many had acquired a stable possession of lands under the name of copyholders; and the condition of mere villenage was become rare.

The three courts at Westminster, of the King's Bench, Common Pleas, and Exchequer, consisting each of four or five judges, administered justice to the entire kingdom; the first having an appellant jurisdiction over the second, and the third being in a great measure confined to causes affecting the crown's property. But as all suits relating to land, as well as some others, and all criminal indictments, could only be determined, so far as they depended upon oral evidence, by a jury of the county, it was necessary that justices of assize and gaol-delivery, being in general the judges of the courts at Westminster, should travel into each county, commonly twice a year, in order to try issues of fact, so called in distinction from issues of law, where the suitors, admitting all essential facts, disputed the rule applicable to them.[1] By this

[1] The pleadings, as they are called, or written allegations of both parties, which form the basis of a judicial enquiry, commence with the *declaration*, wherein the plaintiff states, either specially or in some current form, according to the nature of the case, that he has a debt to demand from, or an injury to be redressed by, the defendant. The latter, in return, puts in his *plea*; which, if it amount to a denial of the facts alleged in the declaration, must *conclude to the country*, that is, must refer the whole matter to a jury. But if it contain an admission of the fact, along with a legal justification of it, it is said to *conclude to the court*; the effect of which is to make it necessary for the plaintiff to reply; in which *replication* he may deny the facts pleaded in justification, and conclude to the country; or allege some new matter in explanation, to show that they do not meet all the circumstances, concluding to the court; or demur, that is, deny that, although true and complete as a statement of facts, the declaration or plea is sufficient according to law to found or repel the plaintiff's suit. In the last case it becomes an issue in law, and is determined by the judges, without the intervention of a jury; it being a principle, that by demurring, the party acknowledges the truth of all matters alleged on the pleadings. But in whatever stage of the proceedings either of the litigants concludes to the country; which he is obliged to do, whenever the question can be reduced to a disputed fact, a jury must be impanelled to decide it by their verdict. These pleadings, together with what is called the *postea*, that is, an indorsement by the clerk of the court wherein the trial

device, which is as ancient as the reign of Henry II., the fundamental privilege of trial by jury, and the convenience of private suitors as well as accused persons, were made consistent with an uniform jurisprudence ; and though the reference of every legal question, however insignificant, to the courts above must have been inconvenient and expensive in a still greater degree than at present, it had no doubt a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city, and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity. The minor tribunals of each county, hundred, and manor, respectable for their antiquity, and for their effect in preserving a sense of freedom and justice, had in a great measure, though not probably so much as in modern times, gone into disuse. In a few counties there still remained a palatine jurisdiction, exclusive of the king's courts ; but in these the common rules of law, and the mode of trial by jury, were preserved. Justices of the peace, appointed out of the gentlemen of each county, enquired into criminal charges, committed offenders to prison, and tried them at their quarterly sessions, according to the same forms as the judges of gaol-delivery. The chartered towns had their separate jurisdiction under the municipal magistracy.

The laws against theft were severe, and capital punishments unsparingly inflicted. Yet they had little effect in repressing acts of violence, to which a rude and licentious state of manners, and very imperfect dispositions for preserving the public peace, naturally gave rise. These were frequently perpetrated or instigated by men of superior wealth and power, above the control of the mere officers of justice. Meanwhile the kingdom was increasing in opulence, the English merchants possessed a large share of the trade of the north ; and a woollen manufacture, established in different parts of the kingdom, had not only enabled the legislature to restrain the import of cloths, but begun to supply foreign nations. The population may probably be reckoned, without any material error, at about three millions, but by no means distributed in the same proportions as at present ; the northern counties, especially Lancashire and Cumberland, being very ill peopled,

has been, reciting that *afterwards* the cause was so tried, and such a verdict returned, with the subsequent entry of the judgment itself, form the record.

This is merely intended to explain the phrase in the text, which common readers might not clearly understand. The theory of special pleading, as it is generally called, could not be further elucidated without lengthening this note beyond all bounds. But it all rests upon the ancient maxim: "De facto respondent juratores, de jure judices." Perhaps it may be well to add one observation—that in many forms of action, and those of most frequent occurrence in modern times, it is not required to state the legal justification on the pleadings, but to give it in evidence on the general issue : that is, upon a bare plea of denial. In this case the whole matter is actually in the power of the jury. But they are generally bound in conscience to defer, as to the operation of any rule of law, to what is laid down on that head by the judge ; and when they disregard his directions, it is usual to annul the verdict, and grant a new trial. There seem to be some disadvantages in the annihilation, as it may be called, of written pleadings, by their reduction to an unmeaning form, which has prevailed in three such important and extensive forms of action, as EJECTMENT, GENERAL ASSUMPSIT, and TROVER: both as it throws too much power into the hands of the jury, and as it almost nullifies the appellant jurisdiction, which can only be exercised where some error is apparent on the face of the record. But great practical convenience, and almost necessity, may I suppose, be alleged as far more than a compensation for these evils.

and the inhabitants of London and Westminster not exceeding sixty or seventy thousand.[1]

Such was the political condition of England, when Henry Tudor, the only living representative of the house of Lancaster, though incapable, by the illegitimacy of the ancestor who connected him with it, of asserting a just right of inheritance, became master of the throne by the defeat and death of his competitor at Bosworth, and by the general submission of the kingdom. He assumed the royal title immediately after his victory, and summoned a parliament to recognise or sanction his possession. The circumstances were by no means such as to offer an auspicious presage for the future. A subdued party had risen from the ground, incensed by proscription and elated by success; the late battle had in effect been a contest between one usurper and another; and England had little better prospect than a renewal of that desperate and interminable contention, which the pretences of hereditary right have so often entailed upon nations.

A parliament called by a conqueror might be presumed to be itself conquered. Yet this assembly did not display so servile a temper, or so much of the Lancastrian spirit, as might be expected. It was "ordained and enacted by the assent of the lords, and at the request of the commons, that the inheritance of the crowns of England and France, and all dominions appertaining to them, should remain in Henry VII. and the heirs of his body for ever, and in none other."[2] Words studiously ambiguous, which, while they avoid the assertion of an hereditary right that the public voice repelled, were meant to create a parliamentary title, before which the pretensions of lineal descent were to give way. They seem to make Henry the stock of a new dynasty. But, lest the spectre of indefeasible right should stand once more in arms on the tomb of the house of York, the two houses of parliament showed an earnest desire for the king's marriage with the daughter of Edward IV., who, if she should bear only the name of royalty herself, might transmit an undisputed inheritance of its prerogatives to her posterity.

This marriage, and the king's great vigilance in guarding his crown, caused his reign to pass with considerable reputation, though not without disturbance. He had to learn by the extraordinary, though transient, success of two impostors, if the second is to be reckoned such, that his subjects were still strongly infected with the prejudice which had once overthrown the family he claimed to represent. Nor could those who served him be exempt from apprehensions of a change of dynasty, which might convert them into attainted rebels. The state of the nobles and gentry had been intolerable during the alternate proscriptions of Henry VI. and Edward IV. Such apprehensions led to

[1] The population for 1485 is estimated by comparing a sort of census in 1378, when the inhabitants of the realm seem to have amounted to about 2,300,000, with one still more loose under Elizabeth, in 1588, which would give about 4,400,000; making some allowance for more rapid increase in the latter period. Three millions at the accession of Henry VII. is probably not too low an estimate.

[2] Rot. Parl. vi. 270. But the pope's bull of dispensation for the king's marriage speaks of the realm of England as "jure hæreditario ad te legitimum in illo prædecessorum tuorum successorem pertinens." Rymer, xii. 294. And all Henry's own instruments claim an hereditary right, of which many proofs appear in Rymer.

a very important statute in the eleventh year of this king's reign, intended, as far as law could furnish a prospective security against the violence and vengeance of factions, to place the civil duty of allegiance on a just and reasonable foundation, and indirectly to cut away the distinction between governments *de jure* and *de facto*. It enacts, after reciting that subjects by reason of their allegiance are bound to serve their prince for the time being against every rebellion and power raised against him, that "no person attending upon the king and sovereign lord of this land for the time being, and doing him true and faithful service, shall be convicted of high treason, by act of parliament or other process of law, nor suffer any forfeiture or punishment; but that every act made contrary to this statute should be void and of no effect." —Stat. 11 H. 7. c. 1. The endeavour to bind future parliaments was of course nugatory; but the statute remains an unquestionable authority for the constitutional maxim, that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance of those who may pretend to a better right. It was much resorted to in argument at the time of the revolution, and in the subsequent period. [1]

It has been usual to speak of this reign as if it formed a great epoch in our constitution: the king having by his politic measures broken the power of the barons who had hitherto withstood the prerogative, while the commons had not yet risen from the humble station which they were supposed to have occupied. I doubt, however, whether the change was quite so precisely referable to the time of Henry VII., and whether his policy has not been somewhat overrated. In certain respects, his reign is undoubtedly an æra in our history. It began in revolution and a change in the line of descent. It nearly coincides, which is more material, with the commencement of what is termed modern history, as distinguished from the middle ages, and with the memorable events that have led us to make that leading distinction, especially the consolidation of the great European monarchies, among which England took a conspicuous station. But, relatively to the main subject of our enquiry, it is not evident that Henry VII. carried the authority of the crown much beyond the point at which Edward IV. had left it. The strength of the nobility had been grievously impaired by the bloodshed of the civil wars and the attainders that followed them. From this cause, or from the general intimidation, we find, as I have taken notice in another place, that no laws favourable to public liberty, or remedial with respect to the aggressions of power, were enacted, or, so far as appears, even proposed in parliament, during the reign of Edward IV.; the first, since that of John, to which such a remark can be applied. The commons, who had not always been so humble and abject as smatterers in history are apt to fancy, were by this time much degenerated from the spirit they had displayed under Edward III. and Richard II. Thus the founder of the line of Tudor

[1] Blackstone (vol. iv. c. 6) has some rather perplexed reasoning on this statute, leaning a little towards the *de jure* doctrine, and at best confounding *moral* with *legal* obligations. In the latter sense, whoever attends to the preamble of the act will see that Hawkins, whose opinion Blackstone calls in question, is right; and that he is himself wrong in pretending that "the statute of Henry VII. does by no means command any opposition to a king *de jure*, but excuses the obedience paid to a king *de facto*."

came, not certainly to an absolute, but a vigorous prerogative, which his cautious, dissembling temper and close attention to business were well calculated to extend.

The laws of Henry VII. have been highly praised by Lord Bacon as "deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the estate of his people still more and more happy, after the manner of the legislators in ancient and heroical times." But when we consider how very few kings or statesmen have displayed this prospective wisdom and benevolence in legislation, we may hesitate a little to bestow so rare a praise upon Henry. Like the laws of all other times, his statutes seem to have had no further aim than to remove some immediate mischief, or to promote some particular end. One, however, has been much celebrated as an instance of his sagacious policy, and, as the principal cause of exalting the royal authority upon the ruins of the aristocracy; I mean the statute of fines, as one passed in the fourth year of his reign is commonly called, which is supposed to have given the power of alienating entailed lands. But both the intention and effect of this seem not to have been justly apprehended.

In the first place, it is remarkable that the statute of Henry VII. is merely a transcript, with very little variation, from one of Richard III., which is actually printed in most editions. It was re-enacted, as we must presume, in order to obviate any doubt, however ill-grounded, which might hang upon the validity of Richard's laws. Thus vanish at once into air the deep policy of Henry VII., and his insidious schemes of leading on a prodigal aristocracy to its ruin. It is surely strange that those who have extolled this sagacious monarch for breaking the fetters of landed property, though many of them were lawyers, should never have observed, that whatever credit might be due for the innovation should redound to the honour of the unfortunate usurper. But Richard, in truth, had no leisure for such long-sighted projects of strengthening a throne for his posterity which he could not preserve for himself. His law, and that of his successor, had a different object in view.

It would be useless to some readers, and perhaps disgusting to others, especially in the very outset of this work, to enter upon the history of the English law as to the power of alienation. But I cannot explain the present subject without mentioning, that, by a statute in the reign of Edward I., commonly called *de donis conditionalibus*, lands given to a man and the heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue, or from those who were to succeed them. Such lands were also incapable of forfeiture for treason or felony; and more, perhaps, upon this account than from any more enlarged principle, those entails were not viewed with favour by the courts of justice. Several attempts were successfully made to relax their strictness; and finally, in the reign of Edward IV., it was held by the judges in the famous case of Taltarum, that a tenant in tail might, by what is called suffering a common recovery, that is, by means of an imaginary process of law, divest all those who were to come after him of their succession, and become owner of the fee

simple. Such a decision was certainly far beyond the sphere of judicial authority. The legislature, it was probably suspected, would not have consented to infringe a statute which they reckoned the safeguard of their families. The law, however, was laid down by the judges; and in those days the appellant jurisdiction of the House of Lords, by means of which the aristocracy might have indignantly reversed the insidious decision, had gone wholly into disuse. It became by degrees a fundamental principle, that an estate in tail can be barred by a common recovery; nor is it possible by any legal subtlety to deprive the tenant of this control over his estate. Schemes were, indeed, gradually devised, which, to a limited extent, have restrained the power of alienation; but these do not belong to our subject.

The real intention of these statutes of Richard and Henry was not to give the tenant in tail a greater power over his estate; (for it is by no means clear that the words enable him to bar his issue by levying a fine; and when a decision to that effect took place long afterwards (19 H. 8.), it was with such difference of opinion that it was thought necessary to confirm the interpretation by a new act of parliament;) but rather, by establishing a short term of prescription, to put a check on the suits for the recovery of lands, which, after times of so much violence and disturbance, were naturally springing up in the courts. It is the usual policy of commonwealths to favour possession; and on this principle the statute enacts, that a fine levied with proclamations in a public court of justice shall, after five years, except in particular circumstances, be a bar to all claims upon lands. This was its main scope; liberty of alienation was neither necessary, nor probably intended to be given.[1]

The two first of the Tudors rarely experienced opposition but when they endeavoured to levy money. Taxation, in the eyes of their subjects, was so far from being no tyranny, that it seemed the only species worth a complaint. Henry VII. obtained from his first parliament a grant of tonnage and poundage during life, according to several precedents of former reigns. But when general subsidies were granted, the same people, who would have seen an innocent man led to prison or the scaffold with little attention, twice broke out into dangerous rebellions; and as these, however arising from such immediate discontent, were yet a good deal connected with the opinion of Henry's usurpation, and the claims of the pretender, it was a necessary policy to avoid too frequent imposition of burdens upon the poorer classes of the community.[2] He had recourse accordingly to the system of

[1] For these observations on the statute of fines, I am principally indebted to Reeves's History of the English Law (iv. 133), a work, especially in the latter volumes, of great research and judgment: a continuation of which, in the same spirit, and with the same qualities, (besides some others that are rather too much wanting in it), would be a valuable accession not only to the lawyer's, but philosopher's library. That entails had been defeated by means of a common recovery before the statute had been remarked by former writers, and is indeed obvious; but the subject was never put in so clear a light as by Mr. Reeves.

The principle of breaking down the statute *de donis* was so little established, or consistently acted upon, in this reign, that in 11 H. VII. the judges held that the donor of an estate-tail might restrain the tenant from suffering a recovery. Id. p. 159, from the year-book.

[2] It is said by the biographer of Sir Thomas More, that parliament refused the king a subsidy in 1502, which he demanded on account of the marriage of his daughter Margaret, at the

benevolences, or contributions apparently voluntary, though in fact extorted, from his richer subjects. These, having become an intolerable grievance under Edward IV., were abolished in the only parliament of Richard III. with strong expressions of indignation. But in the seventh year of Henry's reign, when, after having with timid and parsimonious hesitation suffered the marriage of Anne of Britany with Charles VIII., he was compelled by the national spirit to make a demonstration of war, he ventured to try this unfair and unconstitutional method of obtaining aid; which received afterwards too much of a parliamentary sanction, by an act enforcing the payment of arrears of money which private men had thus been prevailed upon to promise.[1] The statute, indeed of Richard is so expressed as not clearly to forbid the solicitation of voluntary gifts, which of course rendered it almost nugatory.

Archbishop Morton is famous for the dilemma which he proposed to merchants and others, whom he solicited to contribute. He told those who lived handsomely, that their opulence was manifest by their rate of expenditure. Those again, whose course of living was less sumptuous, must have grown rich by their economy. Either class could well afford assistance to their sovereign. This piece of logic, unanswerable in the mouth of a privy councillor, acquired the name of Morton's fork. It is obvious that the House of Commons were actuated by a selfish spirit, and by false views of policy, when they saved a general burden at the expense of a few persons, and gave countenance to what must inevitably be arbitrary and oppressive. Henry, doubtless, reaped great profit from these indefinite exactions, miscalled benevolences. But insatiate of accumulating treasure, he discovered other methods of extortion, still more odious, and possibly more lucrative. Many statutes had been enacted in preceding reigns, sometimes rashly or from temporary motives, sometimes in opposition to prevailing usages which they could not restrain, of which the pecuniary penalties, though exceedingly severe, were so little enforced as to have lost their terror. These his ministers raked out from oblivion; and prosecuting such as could afford to endure the law's severity, filled his treasury with the dishonourable produce of amercements and forfeitures. The feudal rights became, as indeed they always had been, instrumental to oppression. The lands of those who died without heirs fell back to the crown by escheat. It was the duty of certain officers in every county to look after its rights. The king's title was to be found by the inquest of a jury, summoned at the instance of the escheator, and returned into the exchequer. It then became a matter of record, and could not be impeached. Hence the escheators taking hasty inquests, or sometimes falsely pretending

advice of More, then but twenty-two years old. "Forthwith Mr. Tyler, one of the Privy chamber, that was then present, resorted to the king, declaring that a beardless boy, called More, had done more harm than all the rest, for by his means all the purpose is dashed." This of course displeased Henry, who would not, however, he says, "infringe the ancient liberties of that house, which would have been odiously taken." Wordsworth's Eccles. Biography, ii. 66. This story is also told by Roper.

[1] Stat. 11 H. 7. c. 10. Bacon says the benevolence was granted by act of parliament, for which Hume corrects him, and no doubt rightly, for the preamble of this statute cites it to have been "granted by divers of your subjects severally;" and contains a provision, that no heir shall be charged on account of his ancestor's promise.

them, defeated the right heir of his succession. Excessive fines were imposed on granting livery to the king's wards on their majority. Information for intrusion, criminal indictments, outlawries on civil process, in short, the whole course of justice furnished pretences for exacting money; while a host of dependents on the court, suborned to play their part as witnesses, or even as jurors, rendered it hardly possible for the most innocent to escape these penalties. Empson and Dudley are notorious as prostitute instruments of Henry's avarice, in the later and more unpopular years of his reign; but they dearly purchased a brief hour of favour by an ignominious death and perpetual infamy. (Hall, 502.) The avarice of Henry VII., as it rendered his government unpopular, which had always been penurious, must be deemed a drawback from the wisdom ascribed to him; though, by his good fortune, it answered the end of invigorating his power. By these fines and forfeitures, he impoverished and intimidated the nobility. The earl of Oxford compounded, by the payment of 15,000 pounds, for the penalties he had incurred by keeping retainers in livery; a practice mischievous and illegal, but too customary to have been punished before this reign. Even the king's clemency seems to have sprung from the sordid motive of selling pardons; and it has been shown, that he made a profit of every office in his court, and received money for conferring bishoprics.[1]

It is asserted by early writers, though perhaps but on conjecture, that he left a sum thus amassed, of no less than 1,800,000 pounds at his decease. This treasure was soon dissipated by his successor, who had recourse to the assistance of parliament in the very first year of his reign. The foreign policy of Henry VIII., far unlike that of his father, was ambitious and enterprising. No former king had involved himself so frequently in the labyrinth of continental alliances. And if it were necessary to abandon that neutrality which is generally the most advantageous and laudable course, it is certain that his early undertakings against France were more consonant to English interests, as well as more honourable than the opposite policy, which he pursued after the battle of Pavia. The campaigns of Henry in France and Scotland displayed the valour of our English infantry, little called into action for fifty years before, and contributed with other circumstances to throw a lustre over his reign, which prevented most of his contemporaries from duly appreciating its character. But they naturally drew the king into heavy expenses, and, together with his profusion and love of magnificence, rendered his government very burthensome. At his accession, however, the rapacity of his father's administration had excited such universal discontent, that it was found expedient to conciliate the nation. An act was passed in his first parliament to correct the abuses that had prevailed in finding the king's title to lands by escheat (1 H. 8. c. 8). The same parliament repealed the law of the late reign, enabling justices of assize, and of the peace to determine al. offences, except treason and felony, against any statute in force, withou a jury, upon information in the king's name (11 H. 7. c. 3. Rep. 1 H. 8

[1] Turner's History of England, iii. 628., from a MS. document. A vast number of persons paid fines for their share in the western rebellion of 1497, from 200*l.* down to 20*s.* Hall, 486. Ellis's Letters, illustrative of English History, i. 38.

c. 6). This serious innovation had evidently been prompted by the spirit of rapacity, which probably some honest juries had shown courage enough to withstand. It was a much less laudable concession to the vindictive temper of an injured people, seldom unwilling to see bad methods employed in punishing bad men, that Empson and Dudley, who might perhaps by stretching the prerogative have incurred the penalties of a misdemeanor, were put to death on a frivolous charge of high treason.[1]

The demands made by Henry VIII. on parliament were considerable both in frequency and amount. Notwithstanding the servility of those times, they sometimes attempted to make a stand against these inroads upon the public purse. Wolsey came into the House of Commons in 1523, and asked for 800,000*l*, to be raised by a tax of one-fifth upon lands and goods, in order to prosecute the war just commenced against France. Sir Thomas More, then speaker, is said to have urged the House to acquiesce.[2] But the sum demanded was so much beyond any precedent, that all the independent members opposed a vigorous resistance. A committee was appointed to remonstrate with the cardinal, and to set forth the impossibility of raising such a subsidy. It was alleged that it exceeded all the current coin of the kingdom. Wolsey, after giving an uncivil answer to the committee, came down again to the House, on pretence of reasoning with them, but probably with a hope of carrying his end by intimidation. They received him, at More's suggestion, with all the train of attendants that usually encircled the haughtiest subject who had ever been known in England. But they made no other answer to his harangue, than that it was their usage to debate only among themselves. These debates lasted fifteen or sixteen days. A considerable part of the Commons appears to have consisted of the king's household officers, whose influence, with the utmost difficulty, obtained a grant much inferior to the cardinal's requisition, and payable by instalments in four years. But Wolsey, greatly dissatisfied with this imperfect obedience, compelled the people to pay up the whole subsidy at once.[3]

[1] They were convicted by a jury, and afterwards attainted by parliament, but not executed for more than a year after the king's accession. If we may believe Holingshed, the council at Henry VIII.'s accession made restitution to some who had been wronged by the extortion of the late reign;—a singular contrast to their subsequent proceedings! This, indeed, had been enjoined by Henry VII.'s will. But he had excepted from this restitution "what had been done by the course and order of our laws;" which, as Mr. Astle observes, was the common mode of his oppressions.

[2] Lord Herbert puts an acute speech into the mouth of More, arguing more acquaintance with sound principles of political economy, than was usual in the supposed speaker's age, or even in that of the writer. But it is more probable that this is of his own invention. He has taken a similar liberty on another occasion, throwing his own broad notions of religion into an imaginary speech of some unnamed member of the Commons, though manifestly unsuited to the character of the times. In both instances he has deceived Hume, who takes these harangues for genuine.

[3] Roper's Life of More. Hall, 656, 672. This chronicler, who wrote under Edward VI., is our best witness for the events of Henry's reign. Grafton is so literally a copyist from him, that it was a great mistake to republish this part of his chronicle in the late expensive, and therefore incomplete, collection; since he adds no one word, and omits only a few ebullitions of Protestant zeal, which he seems to have considered too warm. Holingshed, though valuable, is later than Hall. Wolsey, the latter observes, gave offence to the Commons, by descanting on the wealth and luxury of the nation, "as though he had repined or disclaimed that any man should fare well, or be well clothed but himself."

But the most authentic memorial of what passed on this occasion has been preserved in a

No parliament was assembled for seven years after this time. Wolsey had already resorted to more arbitrary methods of raising money by loans and benevolences.[1] The year before this date in Commons, he borrowed twenty thousand pounds of the city of London; yet so insufficient did that appear for the king's exigencies, that within two months, commissioners were appointed throughout the kingdom to swear every man to the value of his possessions, requiring a rateable part according to such declaration. The clergy, it is said, were expected to contribute a fourth; but I believe that benefices above ten pounds in yearly value were taxed at one third. Such unparalleled violations of the clearest and most important privilege that belonged to Englishmen excited a general apprehension.[2] Fresh commissioners, however, were appointed in 1525, with instructions to demand the sixth part of every

letter from a member of the Commons to the earl of Surrey, (soon after Duke of Norfolk,) at that time the king's lieutenant in the north.

"Please it your good lordships to understand, that sithence the beginning of the Parliament, there hath been the greatest and sorest hold in the Lower House for the payment of two shillings of the pound, that ever was seen, I think, in any parliament. This matter hath been debated, and beaten, fifteen or sixteen days together. The highest necessity alleged on the king's behalf to us, that ever was heard of; and, on the contrary, the highest poverty confessed, as well by knights, esquires, and gentlemen of every quarter, as by the commoners, citizens, and burgesses. There hath been such hold, that the House was like to have been dissevered; that is to say, the knights being of the King's council, the King's servants and gentlemen of the one party; which in so long time were spoken with and made to see, yea, it may fortune, contrary to their heart, will, and conscience. Thus hanging this matter, yesterday the more part being the King's servants, gentlemen, were there assembled; and so they, being the more part, willed and gave to the King two shillings of the pound of goods or lands, the best to be taken for the King. All lands to pay two shillings of the pound, from the laity to the highest. The goods to pay two shillings of the pound, from twenty pound upward; and from forty shillings of goods, to twenty pound, to pay sixteen-pence of the pound; and under forty shillings, every person to pay eightpence. This is to be paid in two years. I have heard no man in my life, that can remember that ever there was given to any one of the King's ancestor's half so much at one graunt. Nor, I think, there was never such a president seen before this time. I beseeke Almighty God, it may be well and peaceably levied, and surely payd unto the King's grace, without grudge, and especially without loosing the good will and true hearts of his subjects, which I reckon a far greater treasure for the King than gold and silver. And the gentlemen that must take pains to levy this money among the Kingis subjects, I think, shall have no little business about the same." Strype's Eccles. Memorials, vol. i. p. 49. This is also printed in Ellis's Letters illustrative of English History, i. 220.

[1] I may notice here a mistake of Mr. Hume and Dr. Lingard. They assert Henry to have received tonnage and poundage several years before it was vested in him by the legislature. But it was granted by his first parliament, stat. 1 H. 8. c. 20., as will be found even in Ruffhead's table of contents, though not in the body of his volume; and the act is of course printed at length in the great edition of the statutes. That which probably by its title gave rise to the error, 6 H. 8. c. 13. has a different object.

[2] Hall, 645. This chronicler says, the laity were assessed at a tenth part. But this was only so of the smaller estates, namely, from 20*l.* to 300*l.*; for from 300*l.* to 1000*l.*, the contribution demanded was twenty marks for each 100*l.*, and for an estate of 1000*l.* two hundred marks, and so in proportion upwards. MS. Instructions to Commissioners, penes auctorem. This was, "upon sufficient promise and assurance, to be repaid unto them upon such grants and contributions as shall be given and granted to his grace at his next parliament," Ib. "And they shall practise by all the means to them possible, that such sums as shall be so granted by the way of loan, be forthwith levied and paid, or the most part, or at the least the moiety thereof, the same to be paid in as brief time after as they can possibly persuade and induce them unto; showing unto them, that, for the sure payment thereof, they shall have writings delivered unto them under the king's privy seal by such person or persons as shall be deputed by the king to receive the said loan, after the form of a minute to be shown unto them by the said commissioners, the tenor whereof is thus: We, Henry VIII., by the grace of God, King of England and of France, Defender of Faith, and Lord of Ireland, promise by these presents truly to content and repay unto our trusty and well-beloved subject A. B. the sum of ——, which he hath lovingly advanced unto us by way of loan, for defence of our realm, and maintenance of our war against France and Scotland; In witness whereof we have caused our privy seal hereunto to be set and annexed the —— day of ——, the fourteenth year of our reign." Ib. The rate fixed on the clergy I collect by analogy, from that imposed in 1525, which I find in another manuscript letter.

man's substance, payable in money, plate, or jewels, according to the last valuation.[1] This demand Wolsey made in person to the mayor and chief citizens of London. They attempted to remonstrate, but were warned to beware, lest "it might fortune to cost some their heads." Some were sent to prison for hasty words, to which the smart of injury excited them. The clergy, from whom, according to usage, a larger measure of contribution was demanded, stood upon their privilege to grant their money only in convocation, and denied the right of a king of England to ask a man's money without authority of parliament. The rich and poor agreed in cursing the cardinal as the subverter of their laws and liberties; and said, "If men should give their goods by a

[1] A letter in my possession from the duke of Norfolk to Wolsey, without the date of the year, relates, I believe, to this commission of 1525, rather than that of 1522; it being dated on the 10th April, which appears from the contents to have been before Easter; whereas Easter did not fall beyond that day in 1523 or 1524, but did so in 1525. He informs the cardinal, that from twenty pounds upward there were not twenty in the county of Norfolk who had not consented. "So that I see great likelihood that this grant shall be much more than the loan was." It was done, however, very reluctantly, as he confesses; "assuring your grace that they have not granted the same without shedding of many salt tears, only for doubt how to find money to content the king's highness." The resistance went farther than the duke thought fit to suppose; for in a very short time the insurrection of the common people took place in Suffolk. In another letter from him and the duke of Suffolk to the cardinal they treat this rather lightly, and seem to object to the remission of the contribution.

This commission issued soon after the news of the battle of Pavia arrived. The pretext was the king's intention to lead an army into France. Warham wrote more freely than the duke of Norfolk as to the popular discontent, in a letter to Wolsey, dated April 5. "It hath been showed me in a secret manner of my friends, the people sore grudgeth and murmureth, and speaketh cursedly among themselves, as far as they dare, saying that they shall never have rest of payments as long as some liveth, and that they had better die than to be thus continually handled, reckoning themselves, their children, and wives, as despoulit, and not greatly caring what they do, or what becomes of them. * * * Further I am informed, that there is a grudge newly now resuscitate, and revived in the minds of the people; for the loan is not repaid to them upon the first receipt of the grant of parliament, as it was promised them by the commissioners, showing them the king's grace's instructions, containing the same, signed with his grace's own hand in summer, that they fear not to speak, that they be continually beguiled, and no promise is kept unto them; and thereupon some of them suppose that if this gift and grant be once levied, albeit the king's grace go not beyond the sea, yet nothing shall be restored again, albeit they be showed the contrary. And generally it is reported unto me, that for the most part every man saith he will be contented if the king's grace have as much as he can spare, but verily many say they be not able to do as they be required. And many denieth not but they will give the king's grace according to their power, but they will not anywise give at other men's appointments, which knoweth not their needs. * * * I have heard say, moreover, that when the people be commanded to make fires and tokens of joy for the taking of the French king, divers of them have spoken that they have more cause to weep than to rejoice thereat. And divers, as it hath been showed me secretly, have wished openly that the French king were at his liberty again, so as there were a good peace, and the king should not attempt to win France; the winning whereof should be more chargeful to England than profitable, and the keeping thereof much more chargeful than the winning. Also it hath been told me secretly, that divers have recounted and repeated what infinite sums of money the king's grace hath spent already in invading of France, once in his own royal person, and two other sundry times by his several noble captains, and little or nothing in comparison of his costs hath prevailed; insomuch that the king's grace at this hour hath not one foot of land more in France than his most noble father had, which lacked no riches or wisdom to win the kingdom of France, if he had thought it expedient." The archbishop goes on to observe, rather oddly, that "he would that the time had suffered that this practising with the people for so great sums might have been spared till the cuckow time and the hot weather (at which time mad brains be wont to be most busy) had been overpassed."

Warham dwells, in another letter, on the great difficulty the clergy had in making so large a payment as was required of them, and their unwillingness to be sworn as to the value of their goods. The archbishop seems to have thought it passing strange, that people would be so wrongheaded about their money. "I have been," he says, "in this shire twenty years and above, and as yet I have not seen men but would be conformable to reason, and would be reduced to good order, till this time; and what shall cause them now to fall into these wilful and indiscreet ways, I cannot tell, except poverty and decay of substance be the cause of it."

commission, then were it worse than the taxes of France, and England should be bond, and not free."[1] Nor did their discontent terminate in complaints. The commissioners met with a forcible opposition in several counties, and a serious insurrection broke out, in Suffolk. So menacing a spirit overawed the proud tempers of Henry and his minister, who found it necessary not only to pardon all those concerned in these tumults, but to recede altogether upon some frivolous pretexts, from the illegal exaction, revoking the commissions, and remitting all sums demanded under them. They now resorted to the more specious request of a voluntary benevolence. This also the citizens of London endeavoured to repel, by alleging the statute of Richard III. But it was answered, that he was an usurper, whose acts did not oblige a lawful sovereign. It does not appear whether or not Wolsey was more successful in his new scheme; but generally rich individuals had no remedy but to compound with the government.

No very material attempt had been made since the reign of Edward III. to levy a general imposition without consent of parliament, and in the most remote and irregular times it would be difficult to find precedent for so universal and enormous an exaction; since tallages, however arbitrary, were never paid by the barons or freeholders, nor by their tenants; and the aids to which they were liable were restricted to particular cases. If Wolsey, therefore, could have procured the acquiescence of the nation under this yoke, there would probably have been an end of parliaments for all ordinary purposes; though, like the States General of France, they might still be convoked to give weight and security to great innovations. We cannot indeed doubt that the unshackled condition of his friend, though rival, Francis I., afforded a mortifying contrast to Henry. Even under his tyrannical administration there was enough to distinguish the king of a people who submitted in murmuring to violations of their known rights, from one whose subjects had almost forgotten that they ever possessed any. But the courage and love of freedom natural to the English commons, speaking in the hoarse voice of tumult, though very ill supported by their superiors, preserved us in so great a peril. (Hall, 699.)

If we justly regard with detestation the memory of those ministers who have aimed at subverting the liberties of their country, we shall scarcely approve the partiality of some modern historians towards cardinal Wolsey; a partiality too that contradicts the general opinion of his contemporaries. Haughty beyond comparison, negligent of the duties and decorums of his station, profuse as well as rapacious, obnoxious alike to his own order and to the laity, his fall had long been secretly desired by the nation, and contrived by his adversaries. His generosity and magnificence seem rather to have dazzled succeeding ages than his own. But in fact his best apology is the disposition of his master. The latter years of Henry's reign were far more tyrannical than those during which he listened to the counsels of Wolsey; and though this was principally owing to the peculiar circumstances of the latter period, it is but equitable to allow some praise to a minister for

[1] Hall, 696. These expressions, and countless others might be found, showing the fallacy of Hume's hasty assertion, that the writers of the sixteenth century do not speak of their own government as more free than that of France.

the mischief which he may be presumed to have averted. Had a nobler spirit animated the parliament which met at the era of Wolsey's fall, it might have prompted his impeachment for gross violations of liberty. But these were not the offences that had forfeited his prince's favour, or that they dared bring to justice. They were not absent, perhaps, from the recollection of some of those who took a part in prosecuting the fallen minister. I can discover no better apology for Sir Thomas More's participation in impeaching Wolsey on articles so frivolous, that they have served to redeem his fame with later times, than his knowledge of weightier offences against the common weal, which could not be alleged, and especially the commissions of 1525.[1] But in truth this parliament showed little outward disposition to object any injustice of such a kind to the cardinal. They professed to take upon themselves to give a sanction to his proceedings, as if in mockery of their own and their country's liberties. They passed a statute, the most extraordinary, perhaps, of those strange times, wherein "they do, for themselves, and all the whole body of the realm which they represent, freely, liberally, and absolutely give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money, which to them and every of them, is, ought, or might be due, by reason of any money, or any other thing, to his Grace, at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters, under the king's privy seal, general or particular, letter missive, promise, bond, or obligation of repayment, or by any taxation or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose."[2] This extreme servility and breach of trust naturally excited loud murmurs; for the debts thus realised had been assigned over by many to their own creditors, and having all the security both of the king's honour and legal obligation, were reckoned as valid as any other property. It is said by Hall, that most of this House of Commons held offices under the Crown. This precedent was remembered in 1544, when a similar act passed, releasing to the king all monies borrowed by him since 1542, with the additional provision, that if he should have already discharged any of these debts, the party or his heirs should repay his majesty.[3]

[1] The word impeachment is not very accurately applicable to these proceedings against Wolsey; since the articles were first presented to the Upper House, and sent down to the Commons, where Cromwell so ably defended his fallen master that nothing was done upon them. "Upon this honest beginning," says Lord Herbert, "Cromwell obtained his first reputation." I am disposed to conjecture from Cromwell's character and that of the House of Commons, as well as from some passages of Henry's subsequent behaviour towards the cardinal, that it was not the king's intention to follow up this prosecution, at least for the present. This also I find to be Dr. Lingard's opinion.

[2] Rot. Parl. vi. 164. Burnet, Appendix, No. 31. "When this release of the loan," says Hall, "was known to the commons of the realm, Lord! so they grudged and spake ill of the whole parliament; for almost every man counted it his debt, and reckoned surely of the payment of the same, and therefore some made their wills of the same, and some other did set it over to other for debt; and so many men had loss by it, which caused them sore to murmur, but there was no remedy." P. 767.

[3] Stat. 35 H. 8. c. 12. I find in a manuscript, which seems to have been copied from an original in the exchequer, that the monies thus received by way of loan in 1543 amounted to 110,147*l.* 15*s.* 8*d.* There was also a sum called *devotion money*, amounting only to 1093*l.* 8*s.* 3*d.*, levied in 1554, "of the devotion of his highness's subjects for *Defence of Christendom against the Turk*."

Henry had once more recourse, about 1545, to a general exaction, miscalled benevolence. The council's instructions to the commissioners employed in levying it leave no doubt as to its compulsory character. They were to incite all men to a loving contribution, according to the rates of their substance, as they were assessed at the last subsidy, calling on no one whose lands were of less value than 40*s.* or whose chattels were less than 15*l.* It is intimated, that the least which his majesty could reasonably accept would be twenty pence in the pound, on the yearly value of land, and half that sum on moveable goods. They are to summon but a few to attend at one time, and to commune with every one apart, "lest some one unreasonable man, amongst so many, forgetting his duty towards God, his sovereign lord, and his country, may go about by his malicious frowardness to silence all the rest, be they never so well disposed." They were to use "good words and amiable behaviour," to induce men to contribute, and to dismiss the obedient with thanks. But if any person should withstand their gentle solicitations, alleging either poverty or some other pretence, which the commissioners should deem unfit to be allowed, then after failure of persuasions and reproaches for ingratitude, they were to command his attendance before the privy council, at such time as they should appoint, to whom they were to certify his behaviour, enjoining him silence in the mean time, that his evil example might not corrupt the better disposed.[1]

It is but through the accidental publication of some family papers, that we have become acquainted with this document, so curiously illustrative of the government of Henry VIII. From the same authority may be exhibited a particular specimen of the consequences that awaited the refusal of this benevolence. One Richard Reed, an alderman of London, had stood alone, as is said, among his fellow-citizens, in refusing to contribute. It was deemed expedient not to overlook this disobedience; and the course adopted in pursuing it is somewhat remarkable. The English army was then in the field on the Scots border. Reed was sent down to serve as a soldier at his own charge; and the general, sir Ralph Ewer, received intimations to employ him on the hardest and most perilous duty, and subject him, when in garrison, to the greatest privations, that he might feel the smart of his folly and sturdy disobedience. "Finally," the letter concludes, "you must use him in all things according to the sharpe disciplyne militar of the northern wars."[2] It is natural to presume, that few would expose themselves to the treatment of this unfortunate citizen; and that the commissioners, whom we find appointed two years afterwards in every county, to obtain from the king's subjects as

[1] Lodge's Illustrations of British History, i. 711. Strype's Eccles. Memorials, Appendix, n. 119. The sums raised from different counties for this benevolence afford a sort of criterion of their relative opulence. Somerset gave 6807*l.*; Kent, 6471*l.*; Suffolk, 4512*l.*; Norfolk, 4046*l.*; Devon, 4527*l.*; Essex, 5051*l.*; but Lancaster only 660*l.*, and Cumberland, 574*l.* The whole produced 119,581*l.* 7*s.* 6*d.*, besides arrears. In Haynes's State Papers, p. 54, we find a curious minute of Secretary Paget, containing reasons why it was better to get the money wanted by means of a benevolence, than through parliament. But he does not hint at any difficulty of obtaining a parliamentary grant.

[2] Lodge, p. 80. Lord Herbert mentions this story, and observes, that Reed having been taken by the Scots, was compelled to pay much more for his ransom than the benevolence required of him.

much as they would willingly give, if they did not always find perfect readiness, had not to complain of many peremptory denials.[1]

Such was the security that remained against arbitrary taxation under the two Henries. Were men's lives better protected from unjust measures, and less at the mercy of a jealous court? It cannot be necessary to expatiate very much on this subject, in a work that supposes the reader's acquaintance with the common facts of our history; yet it would leave the picture too imperfect, were I not to recapitulate the more striking instances of sanguinary injustice, that have cast so deep a shade over the memory of these princes.

The duke of Clarence, attainted in the reign of his brother Edward IV., left one son, whom his uncle restored to the title of Earl of Warwick. This boy, at the accession of Henry VII., being then about twelve years old, was shut up in the Tower. Fifteen years of captivity had elapsed, when, if we trust to the common story, having unfortunately become acquainted with his fellow-prisoner Perkin Warbeck, he listened to a scheme for their escape, and would probably not have been averse to the ambitious views of that young man. But it was surmised, with as much likelihood as the character of both could give it, that the king had promised Ferdinand of Aragon to remove the earl of Warwick out of the way, as the condition of his daughter's marriage with the prince of Wales, and the best means of securing their inheritance. Warwick accordingly was brought to trial for a conspiracy to overturn the government; which he was induced to confess, in the hope, as we must conceive, and perhaps with an assurance, of pardon, and was immediately executed.

The nearest heir to the house of York, after the queen and her children, and the descendants of the duke of Clarence, was a son of Edward IV.'s sister, the earl of Suffolk, whose elder brother, the earl of Lincoln, had joined in the rebellion of Lambert Simnel, and perished at the battle of Stoke. Suffolk, having killed a man in an affray, obtained a pardon, which the king compelled him to plead in open court at his arraignment. This laudable impartiality is said to have given him offence, and provoked his flight into the Netherlands; whence, being a man of a turbulent disposition, and partaking in the hatred of his family towards the house of Lancaster, he engaged in a conspiracy with some persons at home, which caused him to be attainted of treason. Some time afterwards, the archduke Philip, having been shipwrecked on the coast of England, found himself in a sort of honourable detention at Henry's court. On consenting to his departure, the king requested him to send over the earl of Suffolk; and Philip, though not insensible to the breach of hospitality exacted from him, was content to satisfy his honour by obtaining a promise that the prisoner's life should be spared. Henry is said to have reckoned this engagement merely personal, and to have left as a last injunction to his successor, that he should carry into effect the sentence against Suffolk. Though this was an evident violation of the promise in its spirit, yet Henry VIII., after the lapse of a few years, with no new pretext, caused him to be executed.

The duke of Buckingham, representing the ancient family of

[1] Rymer, xv. 84. These commissions bear date 5th Jan. 1546.

Stafford, and hereditary high constable of England, stood the first in rank and consequence, perhaps in riches, among the nobility. But being too ambitious and arrogant for the age in which he was born, he drew on himself the jealousy of the king, and the resentment of Wolsey. The evidence, on his trial for high treason, was almost entirely confined to idle and vaunting language, held with servants who betrayed his confidence, and soothsayers whom he had believed. As we find no other person charged as parties with him, it seems manifest that Buckingham was innocent of any real conspiracy. His condemnation not only gratified the cardinal's revenge, but answered a very constant purpose of the Tudor government, that of intimidating the great families, from whom the preceding dynasty had experienced so much disquietude.[1]

The execution, however, of Suffolk, was at least not contrary to law; and even Buckingham was attainted on evidence which, according to the tremendous latitude with which the law of treason had been construed, a court of justice could not be expected to disregard. But after the fall of Wolsey, and Henry's breach with the Roman see, his fierce temper, strengthened by habit, and exasperated by resistance, demanded more constant supplies of blood; and many perished by sentences which we can hardly prevent ourselves from considering as illegal, because the statutes to which they might be conformable seem, from their temporary duration, their violence, and the passiveness of the parliaments that enacted them, rather like arbitrary invasion of the law than alterations of it. By an act of 1534, not only an oath was imposed to maintain the succession in the heirs of the king's second marriage, in exclusion of the princess Mary, but it was made high treason to deny the ecclesiastical supremacy of the crown, which, till about two years before, no one had ever ventured to assert. Bishop Fisher, almost the only inflexibly honest churchman who filled a high station in that age, was beheaded for this denial. Sir Thomas More, whose name can ask no epithet, underwent a similar fate. He had offered to take the oath to maintain the succession, which, as he justly said, the legislature was competent to alter; but prudently avoided to give an opinion as to the supremacy, till Rich, solicitor-general, and afterwards chancellor, elicited, in a private conversation, some expressions, which were thought sufficient to bring him within the fangs of the recent statute. A considerable number of less distinguished persons, chiefly ecclesiastical, were afterwards executed by virtue of this law.

The sudden and harsh innovations made by Henry in religion, where every artifice of concealment and delay is required, his destruction of venerable establishments, his tyranny over the recesses of the conscience, excited so dangerous a rebellion in the north of England, that his own general, the duke of Norfolk, thought it absolutely necessary to employ measures of conciliation.[2] The insurgents laid down

[1] Hall, 622. Hume, who is favourable to Wolsey, says, "There is no reason to think the sentence against Buckingham unjust." But no one who reads the trial will find any evidence to satisfy a reasonable mind; and Hume himself soon after adds, that his crime proceeded more from indiscretion than deliberate malice. In fact, the condemnation of this great noble was owing to Wolsey's resentment, acting on the savage temper of Henry.

[2] Several letters that passed between the council and duke of Norfolk (Hardwicke Hyde Papers, i. 28, etc.), tend to confirm what some historians have hinted, that he was suspected of leaning too favourably towards the rebels. The king was most unwilling to grant a free par-

their arms, on an unconditional promise of amnesty. But another rising having occurred in a different quarter, the king made use of this pretext to put to death some persons of superior rank, who, though they had voluntarily, or by compulsion, partaken in the first rebellion, had no concern in the second, and to let loose military law upon their followers. Nor was his vengeance confined to those who had been evidently guilty of these tumults. It is indeed unreasonable to deny, that there might be, nay, there probably were, some real conspirators among those who suffered on the scaffolds of Henry. Yet in the proceedings against the countess of Salisbury, an aged woman, but obnoxious as the daughter of the duke of Clarence and mother of Reginald Pole, an active instrument of the pope in fomenting rebellion,[1] against the abbots of Reading and Glastonbury, and others who were implicated in charges of treason at this period, we find so much haste, such neglect of judicial forms, and so bloodthirsty a determination to obtain convictions, that we are naturally tempted to reckon them among the victims of revenge or rapacity.

It was, probably, during these prosecutions, that Cromwell, a man not destitute of liberal qualities, but who is liable to the one great reproach of having obeyed too implicitly a master whose commands were crimes, inquired of the judges, whether, if parliament should condemn a man to die for treason without hearing him, the attainder could ever be disputed. They answered, that it was a dangerous question, and that parliament should rather set an example to inferior courts by proceeding according to justice. But being pressed to reply by the king's express commandment, they said that an attainder in parliament, whether the party had been heard or not in his defence, could never be reversed in a court of law. No proceedings, it is said, took place against the person intended, nor is it known who he was.[2] But men, prone to remark all that seems an appropriate retribution of Providence, took notice that he who had thus solicited the interpreters of the law to sanction such a violation of natural justice was himself its earliest example. In the apparent zenith of favour, this able and faithful minister, the king's vicegerent in his ecclesiastical supremacy, and recently created earl of Essex, fell so suddenly, and so totally without offence, that it has perplexed some writers to assign the cause. But there seems little doubt that Henry's dissatisfaction with his fourth

don. Norfolk is told, "If you could, by any good means or possible dexterity, reserve a very few persons for punishment, you should assuredly administer the greatest pleasure to his highness that could be imagined, and much in the same advance your own honour."—P. 32. He must have thought himself in danger from some of these letters, which indicate the king's distrust of him. He had recommended the employment of men of high rank as lords of the marches, instead of the rather inferior persons whom the king had lately chosen. This called down on him rather a warm reprimand (p. 39); for it was the natural policy of a despotic court to restrain the ascendancy of great families; nor were there wanting very good reasons for this, even if the public weal had been the sole object of Henry's council.

[1] Pole, at his own solicitation, was appointed legate to the Low Countries in 1537, with the sole object of keeping alive the flame of the northern rebellion, and exciting foreign powers, as well as the English nation, to restore religion by force, if not to dethrone Henry. It is difficult not to suspect that he was influenced by ambitious views in a proceeding so treasonable, and so little in conformity with his polished manners and temperate life. Philips, his able and artful biographer, both proves and glories in the treason. Life of Pole, sect. 3.

[2] Coke's 4th Institute, 37. It is, however, said by lord Herbert and others, that the countess of Salisbury, and the marchioness of Exeter were not heard in their defence. The acts of attainder against them were certainly hurried through parliament; but whether without hearing the parties, does not appear.

wife, Anne of Cleves, whom Cromwell had recommended, alienated his selfish temper, and inclined his ear to the whisperings of those courtiers who abhorred the favourite and his measures. An act, attainting him of treason and heresy was hurried through parliament, without hearing him in his defence.[1] The charges indeed, at least of the first kind, were so ungrounded, that had he been permitted to refute them, his condemnation, though not less certain, might perhaps have caused more shame. This precedent of sentencing men unheard, by means of an act of attainder, was followed in the case of Dr. Barnes, burned not long afterwards for heresy.

The duke of Norfolk had been throughout Henry's reign one of his most confidential ministers. But as the king approached his end, an inordinate jealousy of great men, rather than mere caprice, appears to have prompted the resolution of destroying the most conspicuous family in England. Norfolk's son too, the earl of Surrey, though long a favourite with the king, possessed more talents and renown, as well as a more haughty spirit, than was compatible with his safety. A strong party at court had always been hostile to the duke of Norfolk; and his ruin was attributed especially to the influence of the two Seymours. No accusations could be more futile than those which sufficed to take away the life of the noblest and most accomplished man in England. Surrey's treason seems to have consisted chiefly in quartering the royal arms in his escutcheon; and this false heraldry, if such it were, must have been considered as evidence of meditating the king's death. His father ignominiously confessed the charges against himself, in a vain hope of mercy from one who knew not what it meant. An act of attainder, for both houses of parliament were commonly made accessory to the legal murders of this reign, passed with much haste, and perhaps irregularly; but Henry's demise ensuing at the instant prevented the execution of Norfolk. Continuing in prison during Edward's reign, he just survived to be released and restored in blood under Mary.

Among the victims of this monarch's ferocity, as we bestow most of our admiration on sir Thomas More, so we reserve our greatest pity for Anne Boleyn. Few, very few, except some bigoted and implacable calumniators of the Romish school, have in any age entertained a doubt of her innocence.[2] But her discretion was by no means sufficient

[1] Burnet observes, that Cranmer was absent the first day the bill was read, 17th June, 1540; and by his silence leaves the reader to infer that he was so likewise on the 19th June, when it was read a second and a third time. But this, I fear, cannot be asserted. He is marked in the journal as present on the latter day; and there is the following entry: "Hodie lecta est pro secundo et tertio, billa attincturæ Thomæ Comitis Essex, et communi omnium procerum tunc præsentium concessu, nemine discrepante, expedita est." And at the close of the session, we find a still more remarkable testimony to the unanimity of parliament, in the following words: "Hoc animadvertendum est, quod in hâc sessionne cum proceres darent suffragia, et dicerent sententias super actibus prædictis, ea erat concordia et sententiarum conformitas, ut singuli iis et eorum singulis assenserint, nemine discrepante. Thomas de Soulemont, Cleric. Parliamentorum." As far, therefore, as entries on the journals are evidence, Cranmer was placed in the painful and humiliating predicament of voting for the death of his innocent friend. He had gone as far as he dared in writing a letter to Henry, which might be construed into an apology for Cromwell, though it was full as much so for himself.

[2] Burnet has taken much pains with the subject, and set her innocence in a very clear light:—i. 197. and v. 114. See also Strype, i. 280, and Ellis's Letters, ii. 52. But Anne had all the failings of a vain, weak woman, raised suddenly to greatness. She behaved with unamiable vindictiveness towards Wolsey, and perhaps (but this worst charge is not fully authen-

to preserve her steps on that dizzy height which she had ascended with more eager ambition than feminine delicacy could approve. Henry was probably quicksighted enough to perceive that he did not possess her affections, and his own were soon transferred to another object. Nothing in this detestable reign is worse than her trial. She was indicted partly upon the statute of Edward III., which, by a just though rather technical construction, has been held to extend the guilt of treason to an adulterous queen, as well as to her paramour, partly on the recent law for preservation of the succession, which attached the same penalties to any thing done or said in slander of the king's issue. Her levities in discourse were brought within this strange act by a still more strange interpretation. Nor was the wounded pride of the king content with her death. Under the fear, as is most likely, of a more cruel punishment, which the law affixed to her offence, Anne was induced to confess a pre-contract with lord Percy, on which her marriage with the king was annulled by an ecclesiastical sentence, without awaiting its certain dissolution by the axe.[1] Henry seems to have thought his honour too much sullied by the infidelity of a lawful wife. But for this destiny he was yet reserved. I shall not impute to him as an act of tyranny the execution of Catherine Howard, since it appears probable that the licentious habits of that young woman had continued after her marriage; and though we might not in general applaud the vengeance of a husband who should put a guilty wife to death, it could not be expected that Henry VIII. should lose so reasonable an opportunity of shedding blood.[2] It was after the execution of this fifth wife

ticated) exasperated the king against More. A remarkable passage in Cavendish's Life of Wolsey, p. 103, edit. 1667, strongly displays her indiscretion.

A late writer, whose acuteness and industry would raise him to a very respectable place among our historians, if he could have repressed the inveterate partiality of his profession, has used every oblique artifice to lead his readers into a belief of Anne Boleyn's guilt, while he affects to hold the balance, and state both sides of the question without determining it. Thus he repeats what he must have known to be the strange and extravagant lies of Sanders about her birth; without vouching for them, indeed, but without any reprobation of their absurd malignity. Lingard's Hist. of England, vi. 153. (8vo. edit.) Thus he intimates, that "the records of her trial and conviction have perished, perhaps by the hands of those who respected her memory," p. 316., though had he read Burnet with any care, he would have found that they were seen by that historian, and surely have not perished since by unfair means; not to mention that the record of a trial contains nothing from which a party's guilt or innocence can be inferred. Thus he says that those who were executed on the same charge with the queen neither admitted nor denied the offence for which they suffered; though the best informed writers assert that Norris constantly declared the queen's innocence and his own.

Dr. Lingard must truly be laughing at the public when he takes credit to himself, in the commencement of a note at the end of the same volume, for not "rendering his book more interesting, by representing her as an innocent and injured woman, falling a victim to the intrigues of a religious faction." He well knows that he could not have done so, without contradicting the tenor of his entire work, without ceasing, as it were, to be himself. All the rest of this note is a pretended balancing of evidence, in the style of a judge, who can hardly bear to put for a moment the possibility of a prisoner's innocence.

[1] The lords pronounced a singular sentence, that she should be burned or beheaded at the king's pleasure. Burnet says, the judges complained of this as unprecedented. Perhaps in strictness the king's right to *alter* a sentence is questionable, or rather would be so, if a few precedents were out of the way. In high treason committed by a man, the beheading was part of the sentence, and the king only remitted the more cruel preliminaries. Women, till 1791, were condemned to be burned. But the two queens of Henry, the countess of Salisbury, lady Jane Gray, and, in later times, Mrs. Lisle, were beheaded. Poor Mrs. Gaunt was not thought noble enough to be rescued from the fire. In felony, where beheading is no part of the sentence, it has been substituted by the king's warrant in the cases of the duke of Somerset and lord Audley. I know not why the latter obtained this favour; for it had been refused to lord Stourton, hanged for murder under Mary, as it was afterwards to earl Ferrers.

[2] It is often difficult to understand the grounds of a parliamentary attainder, for which any

that the celebrated law was enacted, whereby any woman whom the king should marry as a virgin incurred the penalties of treason, if she did not previously reveal any failings that had disqualified her for the service of Diana.[1]

These parliamentary attainders, being intended rather as judicial than legislative proceedings, were violations of reason and justice in the application of law. But many general enactments of this reign bear the same character of servility. New political offences were created in every parliament, against which the severest penalties were denounced. The nation had scarcely time to rejoice in the termination of those long debates between the houses of York and Lancaster, when the king's divorce, and the consequent illegitimacy of his eldest daughter, laid open the succession to fresh questions. It was needlessly unnatural and unjust to bastardize the princess Mary, whose title ought rather to have had the confirmation of parliament. But Henry, who would have deemed so moderate a proceeding injurious to his cause in the eyes of Europe, and a sort of concession to the adversaries of the divorce, procured an act settling the crown on his children by Anne or any subsequent wife. Any person disputing the lawfulness of the king's second marriage might, by the sort of construction that would be put on this act, become liable to the penalties of treason. In two years more this very marriage was annulled by sentence; and it would perhaps have been treasonable to assert the princess Elizabeth's legitimacy. The same punishment was enacted against such as should marry without license under the great seal, or have a criminal intercourse with any of the king's children "lawfully born, or otherwise commonly reputed to be his children, or his sister, aunt, or niece." (28 H. 8. c. 18.)

Henry's two divorces had created an uncertainty as to the line of succession, which parliament endeavoured to remove, not by such constitutional provisions in concurrence with the crown, as might define the course of inheritance, but by enabling the king, on failure of issue by Jane Seymour or any other lawful wife, to make over and bequeath the kingdom to any persons at his pleasure, not even reserving a preference to the descendants of former sovereigns. (28 H. 8. c. 7.) By a subsequent statute, the princesses Mary and Elizabeth were nominated in the entail, after the king's male issue, subject, however, to such conditions as he should declare, by non-compliance with which their right was to cease. (35 H. 8. c. 1.) This act still left it in his power to limit

kind of evidence was thought sufficient; and the strongest proofs against Catherine Howard undoubtedly related to her behaviour before marriage, which could be no legal crime. But some of the depositions extend farther.

The writer to whom I have just alluded has made a curious observation on this case. "A plot was woven by the industry of the reformers, which brought the young queen to the scaffold, and weakened the ascendency of the reigning party." p. 407. This is a very audacious assertion; for he proceeds to admit her ante-nuptial guilt, which indeed she is well known to have confessed, and does not give the slightest proof of any plot. Yet, he adds, speaking of the queen and lady Rochford, "I fear [i. e. wish to insinuate] both were sacrificed to the manes of Anne Boleyn."

[1] Stat. 26 H. 8. c. 13.

It may be here observed, that the act attainting Catherine Howard of treason proceeds to declare that the king's assent to bills by commission under the great seal is as valid as if he were personally present, any custom or use to the contrary notwithstanding. 33 H. 8. c. 21. This may be presumed, therefore, to be the earliest instance of the king's passing bills in this manner.

the remainder at his discretion. In execution of this authority, he devised the crown, upon failure of issue from his three children, to the heirs of the body of Mary duchess of Suffolk, the younger of his two sisters; postponing at least, if not excluding, the royal family of Scotland, descended from his elder sister Margaret. In surrendering the regular laws of the monarchy to one man's caprice, this parliament became accessory, so far as in it lay, to dispositions which might eventually have kindled the flames of civil war. But it seemed to aim at inflicting a still deeper injury on future generations, in enacting that a king, after he should have attained the age of twenty-four years, might repeal any statutes made since his accession. (28 H. 8. c. 17.) Such a provision not only tended to annihilate the authority of a regency, and to expose the kingdom to a sort of anarchical confusion during its continuance, but seemed to prepare the way for a more absolute power of abrogating all acts of the legislature. Three years afterwards it was enacted that proclamations made by the king and council under penalty of fine and imprisonment, should have the force of statutes, so that they should not be prejudicial to any person's inheritance, offices, liberties, goods, and chattels, or infringe the established laws. This has been often noticed as an instance of servile compliance. It is, however, a striking testimony to the free constitution it infringed, and demonstrates that the prerogative could not soar to the heights it aimed at, till thus impelled by the perfidious hand of parliament. It is also to be observed, that the power given to the king's proclamations is considerably limited.[1]

A government administered with so frequent violations not only of the chartered privileges of Englishmen, but of those still more sacred rights which natural law has established, must have been regarded, one would imagine, with just abhorrence, and earnest longings for a change. Yet contemporary authorities by no means answer to this expectation. Some mention Henry after his death in language of eulogy; and, if we except those whom attachment to the ancient religion had inspired with hatred towards his memory, very few appear to have been aware that his name would descend to posterity among those of the many tyrants and oppressors of innocence, whom the wrath of Heaven has raised up, and the servility of men has endured. I do not indeed believe that he had really conciliated his people's affection. That perfect fear which attended him must have cast out love. But he had a few qualities that deserve esteem, and several which a nation is pleased to behold in a sovereign. He wanted, or at least did not

[1] 31 H. 8. c. 8. Burnet, i. 263. explains the origin of this act. Great exceptions had been taken to some of the king's ecclesiastical proclamations, which altered laws, and laid taxes on spiritual persons. He justly observes that the restrictions contained in it gave great power to the judges, who had the power of expounding in their hands. The preamble is full as offensive as the body of the act; reciting the contempt and disobedience of the king's proclamations by some "who did not consider *what a king by his royal power might do*, which, if it continued, would tend to the disobedience of the laws of God, and the dishonour of the king's majesty, who might full ill bear it," &c. See this act at length in the great edition of the statutes. There was one singular provision: the clause protecting all persons, as mentioned in the text, in their inheritance or other property, proceeds, "nor shall by virtue of the said act suffer any pains of death." But an exception is afterwards made for "such persons which shall offend against any proclamation to be made by the king's highness, his heirs or successors, for or concerning any kind of heresies against Christian doctrine." Thus it seems that the king claimed a power to declare heresy by proclamation, under penalty of death.

manifest in any eminent degree, one usual vice of tyrants, dissimulation; his manners were affable, and his temper generous. Though his schemes of foreign policy were not very sagacious, and his wars, either with France or Scotland, productive of no material advantage, they were uniformly successful, and retrieved the honour of the English name. But the main cause of the reverence with which our forefathers cherished the king's memory, was the share he had taken in the Reformation. They saw in him not indeed the proselyte of their faith, but the subverter of their enemies' power, the avenging minister of Heaven, by whose giant arm the chain of superstition had been broken, and the prison gates burst asunder.[1]

The ill-assorted body of counsellors who exercised the functions of regency by Henry's testament, were sensible that they had not sinews to wield his iron sceptre, and that some sacrifice must be made to a nation exasperated as well as overawed by the violent measures of his reign. In the first session accordingly of Edward's parliament, the new treasons and felonies which had been created to please his father's bloody disposition, were at once abrogated.[2] The statute of Edward III. became again the standard of high treason, except that the denial of the king's supremacy was still liable to its penalties. The same act, which relieves the subject from these terrors, contains also a repeal of that which had given legislative validity to the king's proclamations. The provisions appear like an elastic recoil of the constitution after the extraordinary pressure of that despotic reign. But, however they may indicate the temper of parliament, we must consider them but as an unwilling and insincere compliance on the part of the government. Henry, too arrogant to dissemble with his subjects, had stamped the law itself with the print of his despotism. The more wily courtiers of Edward's council deemed it less obnoxious to violate than to new-mould the constitution. For, although proclamations had no longer the legal character of statutes, we find several during Edward's reign enforced by penalty of fine and imprisonment. Many of the ecclesiastical changes were first established by no other authority, though afterwards sanctioned by parliament. Rates were thus fixed for the price of provisions; bad money was cried down, with penalties on those who should buy it under a certain value, and the melting of the current coin prohibited on pain of forfeiture. (2 Strype, 147, 341, 491.) Some of these might possibly have a sanction from precedent, and from the acknowledged prerogative of the crown in regulating the coin. But no legal apology can be made for a proclamation in April, 1549, addressed to all justices of the peace, enjoining them to arrest sowers and tellers

[1] Gray has finely glanced at this bright point of Henry's character, in that beautiful stanza where he has made the founders of Cambridge pass before our eyes like shadows over a magic glass:

"—— the majestic lord, Who broke the bonds of Rome."

In a poet, this was a fair employment of his art; but the partiality of Burnet towards Henry VIII. is less warrantable; that he should have blushed to excuse, by absurd and unworthy sophistry, the punishment of those who refused to swear to the king's supremacy, p. 351.

After all, Henry was every whit as good a king and man as Francis I., whom there are still some, on the other side of the Channel, servile enough to extol; not the least more tyrannical and sanguinary, and of better faith towards his neighbours.

[2] 1 Edw. 6. c. 12. By this act it is provided that a lord of parliament shall have the benefit of clergy though he cannot read. Sect. 14. Yet one can hardly believe, that this provision was necessary at so late an æra.

abroad of vain and forged tales and lies, and to commit them to the galleys, there to row in chains as slaves during the king's pleasure.[1] One would imagine that the late statute had been repealed, as too far restraining the royal power, rather than as giving it an unconstitutional extension.

It soon became evident that, if the new administration had not fully imbibed the sanguinary spirit of their late master, they were as little scrupulous in bending the rules of law and justice to their purpose in cases of treason. The duke of Somerset, nominated by Henry only as one of his sixteen executors, obtained almost immediately afterwards a patent from the young king, who, during his minority was certainly not capable of any valid act, constituting him sole regent under the name of protector, with the assistance indeed of the rest as his counsellors, but with the power of adding any others to their number. Conscious of his own usurpation, it was natural for Somerset to dread the aspiring views of others; nor was it long before he discovered a rival in his brother, lord Seymour of Sudeley, whom, according to the policy of that age, he thought it necessary to destroy by a bill of attainder. Seymour, if we may trust to the current opinion, was a dangerous and unprincipled man; he had courted the favour of the young king by small presents of money, and appears beyond question to have entertained a hope of marrying the princess Elizabeth, who had lived much in his house during his short union with the queen-dowager. It was surmised that this lady had been poisoned to make room for a still nobler consort.[2] But in this there could be no treason; and it is not likely that any evidence was given which could have brought him within the statute of Edward III. In this prosecution against lord Seymour, it was thought expedient to follow the very worst of Henry's precedents, by not hearing the accused in his defence. The bill passed through the upper house, the natural guardian of a peer's life and honour, without one dissenting voice. The commons addressed the

[1] Id. 149. Dr. Lingard has remarked an important change in the coronation ceremony of Edward VI. Formerly, the king had taken an oath to preserve the liberties of the realm, and especially those granted by Edward the Confessor, &c., before the people were asked whether they would consent to have him as their king. See the form observed at Richard the Second's coronation in Rymer, vii. 158. But at Edward's coronation, the archbishop presented the king to the people, as rightful and undoubted inheritor by the laws of God and man to the royal dignity and crown imperial of this realm, &c., and asked if they would serve him and assent to his coronation, as by their duty of allegiance they were bound to do. All this was before the oath. 2 Burnet, Appendix, p. 93.

Few will pretend that the coronation, or the coronation oath, was essential to the legal succession of the crown, or the exercise of its prerogatives. But this alteration in the form is a curious proof of the solicitude displayed by the Tudors, as it was much more by the next family, to suppress every recollection that could make their sovereignty appear to be of popular origin.

[2] Haynes's state papers contain many curious proofs of the incipient amour between lord Seymour and Elizabeth, and show much indecent familiarity on one side, with a little childish coquetry on the other. These documents also rather tend to confirm the story of our elder historians, which I have found attested by foreign writers of that age, though Burnet has thrown doubts upon it, that some differences between the queen-dowager and the duchess of Somerset aggravated at least those of their husbands. P. 61. 69. The former is celebrated by our reformers as a pattern of piety and virtue. Yet she married in a few months after Henry's death; and it is alleged with absurd exaggeration, in the articles against lord Seymour, that had she proved immediately with child, it might have passed for the king's. It must be allowed that her attachment for Seymour preceded her royal marriage, and that she could have felt no sorrow for Henry. Her union with the former, however, did not take place before June. Ellis's Letters, ii. 150.

king that they might hear the witnesses, and also the accused. It was answered, that the king did not think it necessary for them to hear the latter, but that those who had given their depositions before the lords might repeat their evidence before the lower house. It rather appears that the commons did not insist on this any farther; but the bill of attainder was carried with a few negative voices.[1] How striking a picture it affords of the sixteenth century, to behold the popular and well-natured duke of Somerset, more estimable at least than any statesman employed under Edward, not only promoting this unjust condemnation of his brother, but signing the warrant under which he was beheaded!

But it was more easy to crush a single competitor, than to keep in subjection the subtle and daring spirits trained in Henry's councils, and jealous of the usurpation of an equal. The protector, attributing his success, as is usual with men in power, rather to skill than fortune, and confident in the two frailest supports that a minister can have, the favour of a child, and of the lower people, was stripped of his authority within a few months after the execution of lord Seymour, by a confederacy which he had neither the discretion to prevent, nor the firmness to resist. Though from this time but a secondary character upon the public stage, he was so near the throne as to keep alive the suspicions of the duke of Northumberland, who, with no ostensible title, had become not less absolute than himself. It is not improbable that Somerset was innocent of the charge imputed to him, namely, a conspiracy to murder some of the privy-councillors, which had been erected into felony by a recent statute; but the evidence, though it may have been false, does not seem legally insufficient. He demanded on his trial to be confronted with the witnesses; a favour rarely granted in that age to state criminals, and which he could not very decently solicit after causing his brother to be condemned unheard. Three lords, against whom he was charged to have conspired, sat upon his trial: and it was thought a sufficient reply to his complaints of this breach of a known principle, that no challenge could be allowed in the case of a peer.

From this designing and unscrupulous oligarchy no measure conducive to liberty and justice could be expected to spring. But among the commons there must have been men, although their names have not descended to us, who, animated by a purer zeal for these objects, perceived on how precarious a thread the life of every man was suspended, when the private deposition of one suborned witness, unconfronted with the prisoner, could suffice to obtain a conviction in cases of treason. In the worst period of Edward's reign, we find inserted in a bill creating some new treasons, one of the most important constitutional provisions which the annals of the Tudor family afford. It is enacted, that "no person shall be indicted for any manner of treason except on the testimony of two lawful witnesses, who shall be brought in person before the accused at the time of his trial, to avow and maintain what they have to say against him, unless he shall willingly con-

[1] Journals, Feb. 27, March 4, 1548-9. From these I am led to doubt whether the commons actually heard witnesses against Seymour, which Burnet and Strype have taken for granted.

fess the charges." Stat. 5 & 6 Edw. 6. c. 11. s. 12. This salutary provision was strengthened, not taken away, as some later judges have ventured to assert, by an act in the reign of Mary. In a subsequent part of this work, I shall find an opportunity for discussing this important branch of constitutional law.

It seems hardly necessary to mention the momentary usurpation of lady Jane Grey, founded on no pretext of title which could be sustained by any argument. She certainly did not obtain that degree of actual possession which might have sheltered her adherents under the statute of Henry VII.; nor did the duke of Northumberland allege this excuse on his trial, though he set up one of a more technical nature, that the great seal was a sufficient protection for acts done by its authority.[1] The reign that immediately followed is chiefly remembered as a period of sanguinary persecution; but though I reserve for the next chapter all mention of ecclesiastical disputes, some of Mary's proceedings in re-establishing popery belong to the civil history of our constitution. Impatient under the existence for a moment of rites and usages which she abhorred, this bigoted woman anticipated the legal authority which her parliament was ready to interpose for their abrogation; the Latin liturgy was restored, the married clergy expelled from their livings, and even many protestant ministers thrown into prison for no other crime than their religion, before any change had been made in the established laws.[2] The queen, in fact, and those around her, acted and felt as a legitimate government restored after an usurpation, and treated the recent statutes as null and invalid. But even in matters of temporal government, the stretches of prerogative were more violent and alarming than during her brother's reign. It is due, indeed, to the memory of one who has left so odious a name, to remark, that Mary was conscientiously averse to encroach upon what she understood to be the privileges of her people. A wretched book having been written to exalt her prerogative on the ridiculous pretence, that, as a queen, she was not bound by the laws of former kings, she showed it to Gardiner, and on his expressing his indignation at the sophism, threw it herself into the fire. An act passed, however, to settle such questions, which declares the queen to have all the lawful prerogatives

[1] Burnet, ii. 243. An act was made to confirm deeds of private persons, dated during Jane's ten days, concerning which some doubt had arisen. 2 Mary sess. 3. c. 4. It is said in this statute, "her highness's most lawful possession was for a time disturbed and disquieted by traiterous rebellion and usurpation."

It appears that the young king's original intention was to establish a modified Salic law, excluding females from the crown, but not their male heirs. In a writing drawn by himself, and entitled "My Device for the Succession," it is entailed on the heirs male of the lady queen, if she have any before his death; then to the *lady Jane and her heirs male;* then to the heirs male of lady Katherine; and in every instance, except Jane, excluding the female herself. Strype's Cranmer, Append. 164. A late author, on consulting the original MS., in the king's handwriting, found that it had been at first written, "the lady Jane's heirs male," but that the words "and her" had been interlined. Nares's Memoirs of lord Burghley, i. 451. Mr. Nares does not seem to doubt but that this was done by Edward himself: the change, however, is remarkable, and should probably be ascribed to Northumberland's influence.

[2] Burnet, Strype, iii. 50, 53. Carte, 290. I doubt whether we have anything in our history more like conquest than the administration of 1553. The queen in the month only of Oct. presented to 256 livings, restoring all those turned out under the acts of uniformity. Yet the deprivation of the bishops might be justified probably by the terms of the commission they had taken out in Edward's reign, to hold their sees during the king's pleasure, for which was afterwards substituted "during good behaviour." Burnet, App. 257. Collier, 218.

of the crown.[1] But she was surrounded by wicked counsellors, renegades of every faith, and ministers of every tyranny. We must in candour attribute to their advice her arbitrary measures, though not her persecution of heresy, which she counted for virtue. She is said to have extorted loans from the citizens of London, and others of her subjects. (Carte 330.) This, indeed, was not more than had been usual with her predecessors. But we find one clear instance during her reign of a duty upon foreign cloth imposed without assent of parliament; an encroachment unprecedented since the reign of Richard II. Several proofs might be adduced from records of arbitrary inquests for offences, and illegal modes of punishment. The torture is perhaps more frequently mentioned in her short reign than in all former ages of our history put together; and probably from that imitation of foreign governments, which contributed not a little to deface our constitution in the sixteenth century, seems deliberately to have been introduced as part of the process in those dark and uncontrolled tribunals which investigated offences against the state. (Haynes 196. Burnet, ii. Appen. 256. iii. 243.) A commission issued in 1557, authorising the persons named in it to inquire, by any means they could devise, into charges of heresy or other religious offences, and in some instances to punish the guilty, in others of a graver nature to remit them to their ordinaries, seems, as Burnet has well observed, to have been meant as a preliminary step to bringing in the inquisition. It was at least the germ of the high-commission court in the next reign.[2] One proclamation, in the last year of her inauspicious administration, may be deemed a flight of tyranny beyond her father's example; which, after denouncing the importation of books filled with heresy and treason from beyond sea, proceeds to declare, that whoever should be found to have such books in his possession should be reputed and taken for a rebel, and executed according to martial law. (Strype, iii. 459.) This had been provoked as well by a violent libel written at Geneva by one Goodman, a refugee, exciting the people to dethrone the queen; as by the recent attempt of one Stafford, a descendant of the house of Buckingham, who, having landed with a small force at Scarborough, had vainly hoped that the general disaffection would enable him to overthrow her government.[3]

Notwithstanding, however, this apparently uncontrolled career of power, it is certain that the children of Henry VIII. did not preserve his almost absolute dominion over parliament. I have only met with

[1] Burnet, ii, 278. Stat. 1 Mary, sess. 3. c. 1. Dr. Lingard rather strangely tells this story on the authority of Father Persons, whom his readers probably do not esteem qu e as much as he does. If he had attended to Burnet, he would have found a more su cient voucher.

[2] Burnet, ii. 347. Collier ii. 404. and Lingard, vii. 266. (who by the way, confounds this commission with something different two years earlier) will not hear of this allusion to the inquisition. But Burnet has said nothing that is not perfectly just.

[3] See Stafford's proclamation from Scarborough castle, Strype, iii. Appen., No. 71. It contains no allusion to religion, both parties being weary of Mary's Spanish counsels. The important letters of Noailles, the French ambassador, to which Carte had access, and which have since been printed, have afforded information to Dr. Lingard, and with those of the imperial ambassador, Renard, which I have not had an opportunity of seeing, throw much light on this reign. They certainly appear to justify the restraint put on Elizabeth, who, if not herself privy to the conspiracies planned in her behalf, which is, however, very probable, was at least too dangerous to be left at liberty. Noailles intrigued with the mal-contents, and

one instance in his reign where the commons refused to pass a bill recommended by the crown. This was in 1532; but so unquestionable were the legislative rights of parliament, that, although much displeased, even Henry was forced to yield.[1] We find several instances during the reign of Edward, and still more in that of Mary, where the commons rejected bills sent down from the upper house; and though there was always a majority of peers for the government, yet the dissent of no small number is frequently recorded in the former reign. Thus the commons not only threw out a bill creating several new treasons, and substituted one of a more moderate nature, with that memorable clause for two witnesses to be produced in open court, which I have already mentioned (Burnet, 190.): but rejected one attainting Tunstal bishop of Durham for misprision of treason, and demurred long to grant a subsidy.[2] Their conduct in the two former instances, and probably in the third, must be attributed to the indignation that was generally felt at the usurped power of Northumberland, and the untimely fate of Somerset. Several cases of similar unwillingness to go along with court measures occurred under Mary. She dissolved in fact her two first parliaments on this account. But the third was far from obsequious, and rejected several of her favourite bills.[3] Two reasons principally contributed to this opposition; the one, a fear of entailing upon the country those numerous exactions of which so many generations had complained, by reviving the papal supremacy, and more especially of a restoration of abbey lands; the other, an extreme repugnance to the queen's Spanish connection.[4] If Mary could have obtained the consent of parliament, she would have settled the crown on her husband, and sent her sister perhaps to the scaffold (Noailles, vol. v. passim).

There cannot be a stronger proof of the increased weight of the commons during these reigns, than the anxiety of the court to obtain

instigated the rebellion of Wyatt, of which Dr. Lingard gives a very interesting account. Carte, indeed, differs from him in many of these circumstances, though writing from the same source, and particularly denies that Noailles gave any encouragement to Wyatt. It is, however, evident, from the tenor of his dispatches, that he had gone great lengths in fomenting the discontent, and was evidently desirous of the success of the insurrection, iii. 36. 43. &c. This critical state of the government may furnish the usual excuse for its rigour. But its unpopularity was brought on by Mary's breach of her word as to religion, and still more by her obstinacy in forming her union with Philip against the general voice of the nation, and the opposition of Gardiner; who, however, after her resolution was taken, became its strenuous supporter in public. For the detestation in which the queen was held, see the letters of Noailles, passim; but with some degree of allowance for his own antipathy to her.

[1] Burnet, i. 117. The king refused his assent to a bill which had passed both houses, but apparently not of a political nature. Lords' Journals, p. 162.

[2] Id. 195. 215. This was the parliament, in order to secure favourable elections for which, the council had written letters to the sheriffs. These do not appear to have availed so much as they might hope.

[3] Carte, 311. 322. Noailles, v. 252. He says that she committed some knights to the Tower for their language in the house. Id. 247. Burnet, p. 324. mentions the same.

[4] Burnet, 322. Carte, 296. Noailles says, that a third part of the commons in Mary's first parliament was hostile to the repeal of Edward's laws about religion, and that the debates lasted a week, ii. 247. The journals do not mention any division; though it is said in Strype, iii. 204., that one member, Sir Ralph Bagnal, refused to concur in the act abolishing the supremacy. The queen, however, in her letter to Cardinal Pole, says of this repeal: "quod non sine contentione, disputatione acri, et summo labore fidelium factum est." Lingard, Carte, Philips's Life of Pole. Noailles speaks repeatedly of the strength of the protestant party, and of the enmity which the English nation, as he expresses it, bore to the pope. But the aversion to the marriage with Philip, and dread of falling under the yoke of Spain, were common to both religions, with the exception of a few mere bigots to the church of Rome.

favourable elections. Many ancient boroughs undoubtedly have at no period possessed sufficient importance to deserve the elective franchise on the score of their riches or population; and it is most likely that some temporary interest or partiality, which cannot now be traced, first caused a writ to be addressed to them. But there is much reason to conclude, that the councillors of Edward VI., in erecting new boroughs, acted upon a deliberate plan of strengthening their influence among the commons. Twenty-two boroughs were created or restored in this short reign; some of them, indeed, places of much consideration, but not less than seven in Cornwall, and several others that appear to have been insignificant. Mary added fourteen to the number; and as the same course was pursued under Elizabeth, we in fact owe a great part of that irregularity in our popular representation, the advantages or evils of which we need not here discuss, less to changes wrought by time, than to deliberate and not very constitutional policy. Nor did the government scruple a direct and avowed interference with elections. A circular letter of Edward to all the sheriffs commands them to give notice to the freeholders, citizens, and burgesses, within their respective counties, "that our pleasure and commandment is, that they shall choose and appoint, as nigh as they possibly may, men of knowledge and experience within the counties, cities, and boroughs;" but nevertheless, that where the privy council should "recommend men of learning and wisdom, in such case their directions be regarded and followed." Several persons accordingly were recommended by letters to the sheriffs, and elected as knights for different shires: all of whom belonged to the court, or were in places of trust about the king. (Strype, ii. 394.) It appears probable that persons in office formed at all times a very considerable portion of the house of commons. Another circular of Mary before the parliament of 1554, directing the sheriffs to admonish the electors to choose good catholics and "inhabitants as the old laws require," is much less unconstitutional; but the earl of Sussex, one of her most active counsellors, wrote to the gentlemen of Norfolk, and to the burgesses of Yarmouth, requesting them to reserve their voices for the person he should name. (Id. iii. 155. Burnet, ii. 228.) There is reason to believe that the court, or rather the imperial ambassador, did homage to the power of the commons, by presents of money, in order to procure their support of the unpopular marriage with Philip. (Burnet, ii. 262. 277.) And if Noailles, the ambassador of Henry II., did not make use of the same means to thwart the grants of subsidy and other measures of the administration, he was at least very active in promising the succour of France, and animating the patriotism of those unknown leaders of that assembly, who withstood the accursed design of a besotted woman and her unprincipled counsellors to transfer this kingdom under the yoke of Spain.[1]

It appears to be a very natural inquiry, after beholding the course of administration under the Tudor line, by what means a government so violent in itself, and so plainly inconsistent with the acknowledged laws, could be maintained; and what had become of that English

[1] Noailles, v. 190. Of the truth of this plot there can be no rational ground to doubt;

spirit which had not only controlled such injudicious princes as John and Richard II., but withstood the first and third Edward in the fulness of their pride and glory. Not indeed, that the excesses of prerogative had ever been thoroughly restrained, or that, if the memorials of earlier ages had been as carefully preserved as those of the sixteenth century, we might not possibly find in them equally flagrant instances of oppression; but still the petitions of parliament, and frequent statutes remain on record, bearing witness to our constitutional law, and to the energy that gave it birth. There had evidently been a retrograde tendency towards absolute monarchy between the reigns of Henry VI. and Henry VIII. Nor could this be attributed to the common engine of despotism, a military force. For, except the yeomen of the guard, fifty in number, and the common servants of the king's household, there was not, in time of peace, an armed man receiving pay throughout England.[1] A government that ruled by intimidation was absolutely destitute of force to intimidate. Hence risings of the mere commonalty were sometimes highly dangerous, and lasted much longer than ordinarily. A rabble of Cornishmen, in the reign of Henry VII., headed by a blacksmith, marched up from their own county to the suburbs of London without resistance. The insurrections of 1525, in consequence of Wolsey's illegal taxation, those of the north ten years afterwards, wherein indeed some men of higher quality were engaged, and those which broke out simultaneously in several counties under Edward VI., excited a well-grounded alarm in the country; and in the two latter instances were not quelled without much time and exertion. The reproach of servility and patient acquiescence under usurped power falls not on the English people, but on its natural leaders. We have seen indeed that the house of commons now and then gave signs of an independent spirit, and occasioned more trouble, even to Henry VIII., than his compliant nobility. They yielded to every mandate of his imperious will; they bent with every breath of his capricious humour; they are responsible for the illegal trial, for the iniquitous attainder, for the sanguinary statute, for the tyranny which they sanctioned by law, and for that which they permitted to subsist without law. Nor was this selfish and pusillanimous subserviency more characteristic of the minions of Henry's favour, the Cromwells, the Riches, the Pagets, the Russells, and the Powletts, than of the representatives of ancient and honourable houses, the Norfolks, the Arundels, and the Shrewsburies. We trace the noble statesmen of those reigns concurring in all the inconsistencies of their revolutions, supporting all the religions of Henry, Edward, Mary, and Elizabeth; adjudging the death of Somerset to gratify Northumberland, and of Northumberland to redeem their participation in his fault, setting up the usurpation of

even Dr. Lingard has nothing to advance against it but the assertion of Mary's counsellors, the Pagets and Arundels, the most worthless of mankind. We are, in fact, greatly indebted to Noailles for his spirited activity, which contributed, in a high degree, to secure both the protestant religion and the national independence of our ancestors.

[1] Henry VII. first established a band of fifty archers to wait on him. Henry VIII. had fifty horse-guards, each with an archer, demilance, and couteiller, like the gendarmerie of France; but on account, probably of the expense it occasioned, their equipment being too magnificent, this soon was given up.

lady Jane, and abandoning her on the first doubt of success, constant only in the rapacious acquisition of estates and honours from whatever source, and in adherence to the present power.

I have noticed in a former work that illegal and arbitrary jurisdiction exercised by the privy council, which, in despite of several positive statutes, continued in a greater or less degree through all the period of the Plantagenet family, to deprive the subject, in many criminal charges, of that sacred privilege, trial by his peers.[1] This usurped jurisdiction, carried much farther and exercised more vigorously, was the principal grievance under the Tudors; and the forced submission of our forefathers was chiefly owing to the terrors of a tribunal, which left them secure from no infliction but public execution, or actual dispossession of their freeholds. And though it was beyond its direct province to pass sentence on capital charges, yet by intimidating jurors, it procured convictions which it was not authorised to pronounce. We are naturally astonished at the easiness with which verdicts were sometimes given against persons accused of treason on evidence insufficient to support the charge in point of law, or in its nature not competent to be received, or unworthy of belief. But this is explained by the peril that hung over the jury in case of acquittal. "If," says sir Thomas Smith, in his Treatise on the Commonwealth of England, "they do pronounce not guilty upon the prisoner, against whom manifest witness is brought in, the prisoner escapeth, but the twelve are not only rebuked by the judges, but also threatened of punishment, and many times commanded to appear in the star-chamber, or before the privy council, for the matter. But this threatening chanceth oftener than the execution thereof; and the twelve answer with most gentle words, they did it according to their consciences, and pray the judges to be good unto them; they did as they thought right, and as they accorded all; and so it passeth away for the most part. Yet I have seen in my time, but not in the reign of the king now, [Elizabeth][2] that an inquest for pronouncing one not guilty of treason contrary to such evidence as was brought in, were not only imprisoned for a space, but a large fine set upon their heads, which they were fain to pay; another inquest for acquitting another, beside paying a fine, were put to open ignominy and shame. But these doings were even then accounted of many for violent, tyrannical, and contrary to the liberty and custom of the realm of England."[3] One of the instances to which he alludes was probably that of the jury who acquitted sir Nicholas Throckmorton in the second year of Mary. He had conducted his own defence with singular boldness and dexterity. On delivering their verdict, the court committed them to prison. Four having acknowledged their offence, were soon released; but the rest

[1] View of Middle Ages, ch. 8. I must here acknowledge, that I did not make the requisite distinction between the concilium secretum, or privy council of state, and the concilium ordinarium, as lord Hale calls it, which alone exercised jurisdiction.

[2] The word *king*, as applied to Elizabeth, is remarkable; but *prince* is not uncommon.

[3] Commonwealth of England, book 3. c. 1. The statute 26 H. 8. c. 4. enacts, that if a jury in Wales acquit a felon, contrary to good and pregnant evidence, or otherwise misbehave themselves, the judge may bind them to appear before the president and council of the Welsh marches. The partiality of Welsh jurors was notorious in that age; and the reproach has not quite ceased.

attempting to justify themselves before the council, were sentenced to pay, some a fine of two thousand pounds, some of one thousand marks; a part of which seems ultimately to have been remitted.[1]

It is here to be observed, that the council of which we have just heard, or, as lord Hale denominates it, though rather, I believe, for the sake of distinction, than upon any ancient authority, the king's ordinary council, was something different from the privy council, with which several modern writers were apt to confound it; that is, the the court of jurisdiction is to be distinguished from the deliberative body, the advisers of the crown. Every privy councillor belonged to the concilium ordinarium; but the chief justices, and perhaps several others who sat in the latter, not to mention all temporal and spiritual peers, who in the opinion at least of some, had a right of suffrage therein, were not necessarily of the former body.[2] This cannot be called in question, without either charging lord Coke, lord Hale, and other writers on the subject, with ignorance of what existed in their own age, or gratuitously supposing that an entirely novel tribunal sprang up in the sixteenth century under the name of the star-chamber. It has indeed been often assumed, that a statute enacted early in the reign of Henry VII. gave the first legal authority to the criminal jurisdiction exercised by that famous court, which in reality was nothing else but another name for the ancient concilium regis, of which our records are full, and whose encroachments so many statutes had endeavoured to repress; a name derived from the chamber wherein it sat, and which is found in many precedents before the time of Henry VII., though not so specially applied to the council of judicature afterwards.[3] The statute of this reign has a much more limited

[1] State Trials, i. 901. Strype, ii. 120. In a letter to the duke of Norfolk (Hardwicke Papers, i. 46.) at the time of the Yorkshire rebellion, 1536, he is directed to question the jury who had acquitted a particular person, in order to discover their motive. Norfolk seems to have objected to this for a good reason, "least the fear thereof might trouble others in the like case." But it may not be uncandid to ascribe this rather to a leaning towards the insurgents than a constitutional principle.

[2] Hale's Jurisdiction of the Lords' House, p. 5. Coke, 4th Inst. 65, where we have the following passage:—"So this court, [the court of star-chamber, as the concilium was then called,] being holden coram rege et concilio, it is, or may be, compounded of three several councils; that is to say, of the lords and others of his majesty's privy council, always judges without appointment, as before it appeareth. 2. The judges of either bench and barons of the exchequer are of the king's council, for matters of law, &c.; and the two chief justices, or in their absence other two justices, are standing judges of this court. 3. The lords of parliament are properly de magno concilio regis; but neither those, not being of the king's privy council, nor any of the rest of the judges or barons of the exchequer are standing judges of the court." But Hudson, in his Treatise of the Court of Star-chamber, written about the end of James's reign, inclines to think that all peers had a right of sitting in the court of star-chamber; there being several instances where some who were not of the council of state were present and gave judgment, as in the case of Mr. Davison, "and how they were complete judges unsworn, if not by their native right, I cannot comprehend; for surely the calling of them in that case was not made legitimate by any act of parliament; neither without their right were they more apt to be judges than any other inferior persons in the kingdom; and yet I doubt not but it resteth in the king's pleasure to restrain any man from that table, as well as he may any of his council from the board." Collectanea Juridica, ii. p. 24. He says also, that it was demurrable for a bill to pray process against the defendant, to appear before the king and his privy council. Ibid.

[3] The privy council sometimes met in the star-chamber, and made orders. See one in 18 H. 6. Harl. MSS. Catalogue, N. 1878, fol. 20. So the statute, 21 H. 8. c. 16., recites a decree *by the king's council in his star-chamber*, that no alien artificer shall keep more than two alien servants, and other matters of the same kind. This could no way belong to the court of star-chamber, which was a judicial tribunal.

It should be remarked, though not to our immediate purpose, that this decree was supposed

operation. I have observed in another place, that the coercive jurisdiction of the council had great convenience, in cases where the ordinary course of justice was so much obstructed by one party, through writs, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed; and that such seem to have been reckoned necessary exceptions from the statutes which restrain its interference. The act of 3 H. 7. c. 1. appears intended to place on a lawful and permanent basis the jurisdiction of the council, or rather a part of the council, over this peculiar class of offences; and after reciting the combination supported by giving liveries, and by indentures or promises, the partiality of sheriffs in making panels, and in untrue returns, the taking of money by juries, the great riots and unlawful assemblies, which almost annihilated the fair administration of justice, empowers the chancellor, treasurer, and keeper of the privy seal, or any two of them, with a bishop and temporal lord of the council, and the chief justices of king's bench and common pleas, or two other justices in their absence, to call before them such as offended in the before-mentioned respects, and to punish them after examination in such manner as if they had been convicted by course of law. But this statute, if it renders legal a jurisdiction which had long been exercised with much advantage, must be allowed to limit the persons in whom it should reside, and certainly does not convey by any implication more extensive functions over a different description of misdemeanors. By a later act, 21 H. 8. c. 20., the president of the council is added to the judges of this court; a decisive proof that it still existed as a tribunal perfectly distinct from the council itself. But it is not styled by the name of the star-chamber in this, any more than in the preceding statute. It is very difficult, I believe, to determine at what time the jurisdiction legally vested in this new court, and still exercised by it forty years afterwards, fell silently into the hands of the body of the council, and was extended by them so far beyond the boundaries assigned by law, under the appellation of the court of star-chamber. Sir Thomas Smith, writing in the early part of Elizabeth's reign, while he does not advert to the former court, speaks of the jurisdiction of the latter as fully established, and ascribes the whole praise; and to a certain degree it was matter of praise, to cardinal Wolsey.

The celebrated statute of 31 H. 8. c. 8., which gives the king's proclamations, to a certain extent, the force of acts of parliament, enacts that offenders convicted of breaking such proclamations before certain persons enumerated therein, being apparently the usual officers of the privy council, together with some bishops and judges, "in the star-chamber or elsewhere," shall suffer such penalties of fine and imprisonment as they shall adjudge. "It is the effect of this court," Smith says, "to bridle such stout noblemen or gentlemen which would offer wrong by force to any manner of men, and cannot be content to demand or defend the right by order of the law. It began long before, but took augmentation and authority at that time that cardinal Wolsey, archbishop of York, was chancellor of England, who of some was

to require an act of parliament for its confirmation; so far was the government of Henry VIII. from arrogating a legislative power in matters of private right.

thought to have first devised that court, because that he after some intermission, by negligence of time, augmented the authority of it,[1] which was at that time marvellous necessary to do to repress the insolency of the noblemen and gentlemen in the north parts of England, who being far from the king and the seat of justice, made almost, as it were, an ordinary war among themselves, and made their force their law, binding themselves, with their tenants and servants, to do or revenge an injury one against another as they listed. This thing seemed not supportable to the noble prince Henry VIII.; and sending for them one after another to his court, to answer before the persons before named, after they had remonstrance showed them of their evil demeanour, and been well disciplined, as well by words as by *fleeting* [confinement in the Fleet prison] a while, and thereby their pride and courage somewhat assuaged, they begun to range themselves in order, and to understand that they had a prince who would rule his subjects by his law and obedience. Since that time, this court has been in more estimation, and is continued to this day in manner as I have said before."[2] But as the court erected by the statute of Henry VII. appears to have been in activity as late as the fall of cardinal Wolsey, and exercised its jurisdiction over precisely that class of offences which Smith here describes, it may perhaps be more likely that it did not wholly merge in the general body of the council till the minority of Edward, when that oligarchy became almost independent and supreme. It is obvious, that most, if not all, of the judges in the court held under that statute were members of the council; so that it might, in a certain sense be considered as a committee from that body, who had long before been wont to interfere with the punishment of similar misdemeanors. And the distinction was so soon forgotten, that the judges of the king's bench in the 13th of Elizabeth cite a case from the year-book of 8 H. 7. as "concerning the star-chamber," which related to the limited court erected by the statute.[3]

[1] Lord Hale thinks that the jurisdiction of the council was gradually "brought into great disuse, though there remain some straggling footsteps of their proceedings till near 3 H. 7." p. 38. "The continual complaints of the commons against the proceedings before the council in causes civil or criminal, although they did not always attain their concession, yet brought a disreputation upon the proceedings of the council, as contrary to Magna Charta and the known laws." p. 39. He seems to admit afterwards, however, that many instances of proceedings before them in criminal causes might be added to these mentioned by lord Coke. p. 43.

The paucity of records about the time of Edward IV. renders the negative argument rather weak; but from the expression of sir Thomas Smith in the text, it may perhaps be inferred, that the council had intermitted in a considerable degree, though not absolutely disused, their exercise of jurisdiction for some time before the accession of the house of Tudor.

Mr. Brodie, in his History of the British Empire under Charles I., i. 158., has treated at considerable length, and with much acuteness, this subject of the antiquity of the star-chamber. I do not coincide in all his positions; but the only one very important is that wherein we fully agree, that its jurisdiction was chiefly usurped, as well as tyrannical.

I will here observe, that this part of our ancient constitutional history is likely to be elucidated by a friend of my own, who has already given evidence to the world of his singular competence for such an undertaking, and who unites with all the learning and diligence of Spelman, Prynne, and Madox, an acuteness and vivacity of intellect which none of them possessed.

[2] Commonwealth of England, book 3, c. 4. We find sir Robert Sheffield in 1517 "put into the Tower again for the complaint he made to the king of my lord cardinal." Lodge's Illustrations, i. p. 27. See also Hall, p. 585, for Wolsey's strictness in punishing the "lords, knights, and men of all sorts, for riots, bearing, and maintenance."

[3] Plowden's Commentaries, 393. In the year-book itself, 8 H. 7. pl. ult., the word star-chamber is not used. It is held in this case, that the chancellor, treasurer, and privy-seal were the only judges, and the rest but assistants. Coke, 4 Inst. 62., denies this to be law; but on

In this half-barbarous state of manners, we certainly discover an apology, as well as motive, for the council's interference; for it is rather a servile worshipping of names than a rational love of liberty, to prefer the forms of trial to the attainment of justice, or to fancy that verdicts obtained by violence or corruption are at all less iniquitous than the violent or corrupt sentences of a court. But there were many cases, wherein neither the necessity of circumstances, nor the legal sanction of any statute, could excuse the jurisdiction habitually exercised by the court of star-chamber. Lord Bacon takes occasion, from the act of Henry VII. to descant on the sage and noble institution, as he terms it, of that court, whose walls had been so often witnesses to the degradation of his own mind. It took cognizance principally, he tells us, of four kinds of causes, "forces, frauds, crimes various of stellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated."[1] Sir Thomas Smith uses expressions less indefinite than these last; and specifies scandalous reports of persons in power, and seditious news, as offences which they were accustomed to punish. We shall find abundant proofs of this department of their functions in the succeeding reigns. But this was in violation of many ancient laws, and not in the least supported by that of Henry VII.[2]

A tribunal so vigilant and severe as that of the star-chamber, proceeding by modes of interrogatory unknown to the common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy. We have seen how the council dealt with those who refused to lend money by way of benevolence, and with the juries who found verdicts that they disapproved. Those that did not yield obedience to their proclamations were not likely to fare better. I know not whether menaces were used towards members of the commons who took part against the crown; but it would not be unreasonable to believe it, or at least that a man of moderate courage would scarcely care to expose himself to the council's resentment, after a dissolution. A knight was sent to the Tower by Mary, for his conduct in parliament, (Burnet, ii. 324.) and Henry VIII. is reported, not perhaps on very certain authority, to have talked of cutting off the heads of refractory commoners.

In the persevering struggles of earlier parliaments against Edward III., Richard II., and Henry IV., it is a very probable conjecture, that many considerable peers acted in union with, and encouraged the efforts of the commons. But in the period now before us, the nobility were precisely the class most deficient in that constitutional spirit, which was far from being extinct in those below them. They knew what havoc had been made among their fathers, by multiplied at-

no better grounds than that the practice of the star-chamber, that is, of a different tribunal, was not such.

[1] Hist. of Henry VII. in Bacon's Works, ii. p. 290. (fol. edit.)

[2] The result of what has been said in the last pages may be summed up in a few propositions. 1. The court erected by the statute of 3 Henry VIII. was not the court of star-chamber. 2. This court by the statute subsisted in full force till beyond the middle of Henry VIII.'s reign, but not long afterwards went into disuse. 3. The court of star-chamber was the old concilium ordinarium, against whose jurisdiction many statutes had been enacted from the time of Edward III. 4. No part of the jurisdiction exercised by the star-chamber could be maintained on the authority of the statute of Henry VII.

tainders during the rivalry of the two Roses. They had seen terrible examples of the danger of giving umbrage to a jealous court, in the fate of lord Stanley and the duke of Buckingham, both condemned on slight evidence of treacherous friends and servants, from whom no man could be secure. Though rigour and cruelty tend frequently to overturn the government of feeble princes, it is unfortunately too true that, steadily employed and combined with vigilance and courage, they are often the safest policy of despotism. A single suspicion in the dark bosom of Henry VII., a single cloud of wayward humour in his son, would have been sufficient to send the proudest peer of England to the dungeon and the scaffold. Thus a life of eminent services in the field, and of unceasing compliance in council, could not rescue the duke of Norfolk from the effects of a dislike which we cannot even explain. Nor were the nobles of this age more held in subjection by terror, than by the still baser influence of gain. Our law of forfeiture was well devised to stimulate, as well as to deter; and Henry VIII., better pleased to slaughter the prey than to gorge himself with the carcass, distributed the spoils it brought him among those who had helped in the chase. The dissolution of monasteries opened a more abundant source of munificence; every courtier, every peer, looked for an increase of wealth from grants of ecclesiastical estates, and naturally thought that the king's favour would most readily be gained by an implicit conformity to his will. Nothing, however, seems more to have sustained the arbitrary rule of Henry VIII. than the jealousy of the two religious parties formed in his time, and who, for all the latter years of his life, were maintaining a doubtful and emulous contest for his favour. But this religious contest, and the ultimate establishment of the Reformation, are events far too important, even in a constitutional history, to be treated in a cursory manner; and as, in order to avoid transitions, I have purposely kept them out of sight in the present chapter, they will form the proper subject of the next.

CHAPTER II.

ON THE ENGLISH CHURCH UNDER HENRY VIII., EDWARD VI., AND MARY.

State of Public Opinion as to Religion—Henry VIII.'s Controversy with Luther—His Divorce from Catherine—Separation from the Church of Rome—Dissolution of Monasteries—Progress of the Reformed Doctrine in England—Its Establishment under Edward—Sketch of the chief Points of Difference between the two Religions—Opposition made by Part of the Nation—Cranmer—His Moderation in introducing Changes not acceptable to Zealots—Mary—Persecution under her—Its Effect rather favourable to Protestantism.—pp. 54–88.

NO revolution has ever been more gradually prepared than that which separated almost one half of Europe from the communion of the

Roman see; nor were Luther and Zuingle any more than occasional instruments of that change which, had they never existed, would at no great distance of time have been effected under the names of some other reformers. At the beginning of the sixteenth century, the learned, doubtfully and with caution, the ignorant with zeal and eagerness, were tending to depart from the faith and rites which authority prescribed. But probably not even Germany was so far advanced on this course as England. Almost a hundred and fifty years before Luther, nearly the same doctrines as he taught had been maintained by Wicliffe, whose disciples, usually called Lollards, lasted as a numerous, though obscure and proscribed sect, till, aided by the confluence of foreign streams, they swelled into the Protestant church of England. We hear indeed little of them during some part of the fifteenth century; for they generally shunned persecution; and it is chiefly through records of persecution that we learn the existence of heretics. But immediately before the name of Luther was known, they seem to have become more numerous, or to have attracted more attention; since several persons were burned for heresy, and others abjured their errors, in the first years of Henry VIII.'s reign. Some of these, as usual among ignorant men engaging in religious speculations, are charged with very absurd notions; but it is not so material to observe their particular tenets as the general fact, that an inquisitive and sectarian spirit had begun to prevail.

Those who took little interest in theological questions, or who retained an attachment to the faith in which they had been educated, were in general not less offended than the Lollards themselves with the inordinate opulence and encroaching temper of the clergy. It had been for two or three centuries the policy of our lawyers to restrain these within some bounds. No ecclesiastical privilege had occasioned such dispute, or proved so mischievous, as the immunity of all tonsured persons from civil punishment for crimes. It was a material improvement in the law under Henry VI. that, instead of being instantly claimed by the bishop on their arrest for any criminal charge, they were compelled to plead their privilege at their arraignment, or after conviction. Henry VII. carried this much farther, by enacting that clerks convicted of felony should be burned in the hand. And in 1513 (4 H. 8.), the benefit of clergy was entirely taken away from murderers and highway robbers. An exemption was still made for priests, deacons, and subdeacons. But this was not sufficient to satisfy the church, who had been accustomed to shield under the mantle of her immunity a vast number of persons in the lower degrees of orders, or without any orders at all; and had owed no small part of her influence to those who derived so important a benefit from her protection. Hence, besides violent language in preaching against this statute, the convocation attacked one Dr. Standish, who had denied the divine right of clerks to their exemption from temporal jurisdiction. The temporal courts naturally defended Standish; and the parliament addressed the king to support him against the malice of his persecutors. Henry, after a full debate between the opposite parties in his presence, thought his prerogative concerned in taking the same side; and the clergy sustained a mortifying defeat About the same

time, a citizen of London named Hun, having been confined on a charge of heresy in the bishop's prison, was found hanged in his chamber; and though this was asserted to be his own act, yet the bishop's chancellor was indicted for the murder on such vehement presumptions, that he would infallibly have been convicted, had the attorney-general thought fit to proceed in the trial. This occurring at the same time with the affair of Standish, furnished each party with an argument; for the clergy maintained that they should have no chance of justice in a temporal court; one of the bishops declaring, that the London juries were so prejudiced against the church, that they would find Abel guilty of the murder of Cain. Such an admission is of more consequence than whether Hun died by his own hands, or those of a clergyman; and the story is chiefly worth remembering, as it illustrates the popular disposition towards those who had once been the objects of reverence.[1]

Such was the temper of England, when Martin Luther threw down his gauntlet of defiance against the ancient hierarchy of the Catholic church. But, ripe as a great portion of the people might be to applaud the efforts of this reformer, they were viewed with no approbation by their sovereign. Henry had acquired a fair portion of theological learning, and on reading one of Luther's treatises, was not only shocked at its tenets, but undertook to refute them in a formal answer.[2] Kings who divest themselves of their robes to mingle among polemical writers have not perhaps a claim to much deference from strangers; and Luther, intoxicated with arrogance, and deeming himself a more prominent individual among the human species than any monarch, treated Henry in replying to his book with the rudeness that characterized his temper. A few years afterwards, indeed, he thought proper to write a letter of apology for the language he had held towards the king; but this letter, a strange medley of abjectness and impertinence, excited only contempt in Henry, and was published by him with a severe commentary.[3] Whatever apprehension therefore for the future might be grounded on the humour of the nation, no king in Europe appeared so steadfast in his allegiance to Rome as Henry VIII. at the moment when a storm sprang up that broke the chain for ever.

[1] Burnet. Reeves's History of the Law, iv. p. 308. The contemporary authority is Keilwey's Reports. Collier disbelieves the murder of Hun on the authority of sir Thomas More: but he was surely a prejudiced apologist of the clergy, and this historian is hardly less so. An entry on the journals, 7 H. 8., drawn of course by some ecclesiastic, particularly complains of Standish as the author of periculosissimæ seditiones inter clericam et secularem potestatem.

[2] Burnet is confident that the answer to Luther was not written by Henry (vol. iii. 171.), and others have been of the same opinion. The king, however, in his answer to Luther's apologetical letter, where this was insinuated, declares it to be his own. From Henry's general character and proneness to theological disputation, it may be inferred, that he had at least a considerable share in the work, though probably with the assistance of some who had more command of the Latin language. Burnet mentions in another place, that he had seen a copy of the Necessary Erudition of a Christian man, full of interlineations by the king.

[3] Epist. Lutheri ad Henricum regem missa, &c. Lond. 1526. The letter bears date at Wittemberg, Sept. 1. 1525. It had no relation, therefore, to Henry's quarrel with the pope, though probably Luther imagined that the king was becoming more favourably disposed. After saying that he had written against the king, "stultus ac præceps," which was true, he adds, "invitantibus iis qui majestati tuæ parum favebant," which was surely a pretence; since who, at Wittemberg, in 1521, could have any motive to wish that Henry should be so scurrilously treated? He then bursts out into the most absurd attack on Wolsey; "illud monstrum et publicum odium Dei et hominum, Cardinalis Eboracensis, pestis illa regni tui." This was a singular style to adopt in writing to a king, whom he affected to propitiate; Wolsey being nearer than any

It is certain that Henry's marriage with his brother's widow was unsupported by any precedent, and that, although the pope's dispensation might pass for a cure of all defects, it had been originally considered by many persons in a very different light from those unions which are merely prohibited by the canons. He himself, on coming to the age of fourteen, entered a protest against the marriage, which had been celebrated more than two years before, and declared his intention not to confirm it; an act which must naturally be ascribed to his father.[1] It is true, that in this very instrument we find no mention of the impediment on the score of affinity; yet it is hard to suggest any other objection, and possibly a common form had been adopted in drawing up the protest. He did not cohabit with Catherine during his father's lifetime. Upon his own accession, he was remarried to her; and it does not appear manifest at what time his scruples began, nor whether they preceded his passion for Anne Boleyn. This, however, seems the more probable supposition; yet there can be little doubt, that weariness of Catherine's person, a woman considerably older than himself and unlikely to bear more children, had a far greater effect on his conscience than the study of Thomas Aquinas, or any other theologian. It by no means follows from hence, that, according to the casuistry of the Catholic church and the principles of the canon law, the merits of that famous process were so much against Henry, as out of dislike to him and pity for his queen we are apt to imagine, and as the writers of that persuasion have subsequently assumed.

It would be unnecessary to repeat, what is told by so many historians, the vacillating and evasive behaviour of Clement VII., the assurances he gave the king, and the arts with which he receded from them, the unfinished trial in England before his delegates, Campeggio and Wolsey, the opinions obtained from foreign universities in the king's favour, not always without a little bribery[2], and those of the same import at home, not given without a little intimidation, or the tedious continuance of the process after its adjournment to Rome. More than five years had elapsed from the first application to the

man to Henry's heart. Thence relapsing into his tone of abasement, he says, "ita ut vehementer nunc pudefactus, metuam oculos coram majestate tuâ levare, qui passus sim levitate istâ me moveri in talem tantumque regem per malignos istos operarios; præsertim cum sim fæx et vermis, quem solo contemptu oportuit victum aut neglectum esse," &c. Among the many strange things which Luther said and wrote, I know not one more extravagant than this letter, which almost justifies the supposition that there was a vein of insanity in his very remarkable character.

[1] Collier, vol. ii. Appendix, No. 2. In the Hardwicke Papers, i. 13. we have an account of the ceremonial of the first marriage of Henry with Catherine in 1523. It is remarkable, that a person was appointed to object publicly in Latin to the marriage, as unlawful, for reasons he should there exhibit; "whereunto Mr. Doctor Barnes shall reply, and declare solemnly, also in Latin, the said marriage to be good and effectual in the law of Christ's church, by virtue of a dispensation, which he shall have then to be openly read." There seems to be something in this of the tortuous policy of Henry VII.; but it shows that the marriage had given offence to scrupulous minds.

[2] Burnet wishes to disprove the bribery of these foreign doctors. But there are strong presumptions that some opinions were got by money (Collier, 58.) and the greatest difficulty was found, where corruption perhaps had least influence, in the Sorbonne. Burnet himself proves, that some of the cardinals were bribed by the king's ambassador, both in 1528 and 1532. Vol i. Append. pp. 30. 110. See, too, Strype, i. Append. No. 40.

The same writer will not allow that Henry menaced the university of Oxford in case of non-compliance; yet there are three letters of his to them, a tenth part of which, considering the nature of the writer, was enough to terrify a doctor of divinity. Vol. iii. Append. p. 25. These probably Burnet did not know when he published his first volume.

pope before Henry, though by nature the most uncontrollable of mankind, though irritated by perpetual chicanery and breach of promise, though stimulated by impatient love, presumed to set at nought the jurisdiction to which he had submitted by a marriage with Anne. Even this was a furtive step; and it was not till compelled by the consequences that he avowed her as his wife, and was finally divorced from Catherine by a sentence of nullity, which would more decently, no doubt, have preceded his second marriage.[1] But determined as his mind had become, it was plainly impossible for Clement to have conciliated him by any thing short of a decision, which he could not utter without the loss of the emperor's favour, and the ruin of his own family's interests in Italy. And even for less selfish reasons, it was an extremely embarrassing measure for the pope, in the critical circumstances of the age, to set aside a dispensation granted by his predecessor; knowing that, however some erroneous allegations of fact contained therein might serve for an outward pretext, yet the principle on which the divorce was commonly supported in Europe went generally to restrain the dispensing power of the holy see. Hence it may seem very doubtful whether the treaty which was afterwards partially renewed through the mediation of Francis I., during his interview with the pope at Nice about the end of 1533, would have led to a restoration of amity through the only possible means; when we consider the weight of the imperial party in the conclave, the discredit that so notorious a submission would have thrown on the church, and, above all, the precarious condition of the Medici at Florence in case of a rupture with Charles V. It was more likely the aim of Clement to delude Henry once more by his promises; but this was prevented by the more violent measure, into which the cardinals forced him, of a definite sentence in favour of Catherine, whom the king was required under pain of excommunication to take back as his wife. This sentence of the 23rd of March, 1534, proved a declaration of interminable war; and the king, who, in consequence of the hopes held out to him by Francis, had already despatched an envoy to Rome with his submission to what the pope should decide, now resolved to break off all intercourse for ever, and trust to his own prerogative and power over his subjects for securing the succession of the crown in the line which he designed. It was doubtless a regard to this consideration

[1] The king's marriage is related by the earlier historians to have taken place Nov. 14, 1532. Burnet, however, is convinced by a letter of Cranmer, who, he says could not be mistaken, though he was not apprised of the fact till some time afterwards, that it was not solemnised till about the 25th of January (vol. iii. p. 70.). This letter has since been published in the Archæologia, vol. xviii., and in Ellis's Letters, ii. 34. Elizabeth was born September 7, 1533; for though Burnet, on the authority, he says, of Cranmer, places her birth on Sept. 14., the former date is decisively confirmed by letters in Harl. MSS. 283. 22, and 787. 1. (both wrong in the catalogue). If a late historian, therefore, had contented himself with commenting on these dates, and the clandestine nature of the marriage, he would not have gone beyond the limits of that character of an advocate for one party which he has chosen to assume. It may not be unlikely, though by no means evident, that Anne's prudence, though, as Fuller says of her, "she was cunning in her chastity," was surprised at the end of this long courtship. I think a prurient curiosity about such obsolete scandal very unworthy of history. But when this author asserts Henry to have cohabited with her for three years, and repeatedly calls her his mistress, when he attributes Henry's patience with the pope's chicanery to "the infecundity of Anne," and all this on no other authority than a letter of the French ambassador, which amounts hardly to evidence of a transient rumour, with what face can he put forward the least pretensions to historical candour?

that put him upon his last overtures for an amicable settlement with the court of Rome.[1]

But long before this final cessation of intercourse with that court, Henry had entered upon a course of measures which would have opposed fresh obstacles to a renewal of the connection. He had found a great part of his subjects in a disposition to go beyond all he could wish in sustaining his quarrel, not, in this instance, from mere terror, but because a jealousy of ecclesiastical power, and of the Roman court, had long been a sort of national sentiment in England. The pope's avocation of the process to Rome making evident his duplicity and alienation from the king's side, and the disgrace of Wolsey, took place in the summer of 1529. The parliament which met immediately afterwards was continued through several sessions, an unusual circumstance, till it completed the separation of this kingdom from the supremacy of Rome. In the progress of ecclesiastical usurpation, the papal and episcopal powers had lent mutual support to each other; both consequently were involved in the same odium, and had become the object of restrictions in a similar spirit. Warm attacks were made on the clergy by speeches in the commons, which bishop Fisher severely reprehended in the upper house. This provoked the commons to send a complaint to the king by their speaker, demanding reparation; and Fisher explained away the words that had given offence. An act passed to limit the fees on probates of wills, a mode of ecclesiastical extortion much complained of, and upon mortuaries.[2] The next proceeding was of a far more serious nature. It was pretended, that Wolsey's exercise of authority as papal legate contravened a statute of Richard II., and that both himself and the whole body of the clergy, by their submission to him, had incurred the penalties of a præmunire, that is, the forfeiture of their moveable

[1] The principal authority on the story of Henry's divorce from Catherine is Burnet, in the first and third volumes of his History of the Reformation; the latter correcting the former from additional documents. Strype, in his Ecclesiastical Memorials, adds some particulars not contained in Burnet, especially as to the negotiations with the pope in 1528; and a very little may be gleaned from Collier, Carte, and other writers. There are few parts of history that have been better elucidated. One exception, perhaps, may yet be made. The beautiful and affecting story of Catherine's behaviour before the legates at Dunstable is told by Cavendish and Hall, from whom later historians have copied it. Burnet, however, in his supplemental volume, p. 46., disputed its truth, and on what should seem conclusive authority, that of the original register, whence it appears that the queen never came into court but once, June 18, 1529, to read a paper protesting against the jurisdiction, and that the king never entered it. Carte accordingly treated the story as a fabrication. Hume of course did not choose to omit so interesting a circumstance; but Dr. Lingard has pointed out a letter of the king, which Burnet himself had printed, vol. i. Append. 78., mentioning the queen's presence as well as his own, on June 21., and greatly corroborating the popular account. To say the truth, there is no small difficulty in choosing between two authorities so considerable, if they cannot be reconciled, which seems impossible: but, upon the whole, the preference is due to Henry's letter, dated June 23., as he could not be mistaken, and had no motive to misstate.

This is not altogether immaterial; for Catherine's appeal to Henry, de integritate corporis usque ad secundas nuptias servatâ, without reply on his part, is an important circumstance as to that part of the question. It is, however, certain, that, whether on this occasion or not, she did constantly declare this; and the evidence adduced to prove the contrary is very defective, especially as opposed to the assertion of so virtuous a woman. Dr. Lingard says, that all the favourable answers which the king obtained from foreign universities went upon the supposition that the former marriage had been consummated, and were of no avail unless that could be proved.

[2] Stat. 21 Hen. 8. c. 5. 6. Strype, i. 73. Burnet, 83. It cost a thousand marks to prove sir William Compton's will in 1528. These exactions had been much augmented by Wolsey, who interfered, as legate, with the prerogative court.

estate, besides imprisonment at discretion. These old statutes in restraint of the papal jurisdiction had been so little regarded, and so many legates had acted in England without objection, that Henry's prosecution of the church on this occasion was extremely harsh and unfair. The clergy, however, now felt themselves to be the weaker party. In convocation they implored the king's clemency, and obtained it by paying a large sum of money. In their petition he was styled the protector and supreme head of the church and clergy of England. Many of that body were staggered at the unexpected introduction of a title that seemed to strike at the supremacy they had always acknowledged in the Roman see. And in the end it passed only with a very suspicious qualification, "so far as is permitted by the law of Christ." Henry had previously given the pope several intimations that he should proceed in his divorce without him. For besides a strong remonstrance by letter from the temporal peers as well as bishops against the procrastination of sentence in so just a suit, the opinions of English and foreign universities had been laid before both houses of parliament and of convocation, and the divorce approved without difficulty in the former, and by a great majority in the latter. These proceedings took place in the first months of 1531, while the king's ambassadors at Rome were still pressing for a favourable sentence, though with diminished hopes. Next year the annates, or first fruits of benefices, a constant source of discord between the nations of Europe and their spiritual chief, were taken away by act of parliament; but with a remarkable condition, that if the pope would either abolish the payment of annates, or reduce them to a moderate burthen, the king might declare before the next session, by letters patent, whether this act, or any part of it, should be observed. It was accordingly confirmed by letters patent more than a year after it received the royal assent.

It is difficult for us to determine whether the pope, by conceding to Henry the great object of his solicitude, could in this stage have not only arrested the progress of the schism, but recovered his former ascendancy over the English church and kingdom. But probably he could not have done so in its full extent. Sir Thomas More, who had rather complied than concurred with the proceedings for a divorce, though his acceptance of the great seal on Wolsey's disgrace would have been inconsistent with his character, had he been altogether opposed in conscience to the king's measures, now thought it necessary to resign, when the papal authority was steadily, though gradually, assailed.[1] In the next session an act was passed to take away all appeals to Rome from ecclesiastical courts; which annihilated at one stroke, the

[1] It is hard to say what were More's original sentiments about the divorce. In a letter to Cromwell (Strype i. 183. and App. No. 48. Burnet, App. p. 280.) he speaks of himself as always doubtful. But if his disposition had not been rather favourable to the king, would he have been offered, or have accepted, the great seal? We do not, indeed, find his name in the letter of remonstrance to the pope, signed by the nobility and chief commoners in 1530, which Wolsey, though then in disgrace, very willingly subscribed. But in March, 1531, he went down to the house of commons, attended by several lords, to declare the king's scruples about his marriage, and to lay before them the opinions of universities. In this he perhaps thought himself acting ministerially. But there can be no doubt that he always considered the divorce as a matter wholly of the pope's competence, and which no other body could take out of his hands, though he had gone along cheerfully, as Burnet says, with the prosecution against the clergy, and wished to cut off the illegal jurisdiction of the Roman see. The king did not look

jurisdiction built on long usage and on the authority of the false decretals. This law rendered the king's second marriage, which had preceded it, secure from being annulled by the papal court. Henry, however, still advanced very cautiously, and on the death of Warham, archbishop of Canterbury, not long before this time, applied to Rome for the usual bulls in behalf of Cranmer, whom he nominated to the vacant see. These were the last bulls obtained, and probably the last instance of any exercise of the papal supremacy in this reign. An act followed, in the next session, that bishops elected by their chapter on a royal recommendation should be consecrated, and archbishops receive the pall, without suing for the pope's bull's. All dispensations and licenses hitherto granted by that court were set aside by another statute, and the power of issuing them in lawful cases transferred to the archbishop of Canterbury. The king is in this act recited to be the supreme head of the church of England, as the clergy had two years before acknowledged in convocation. But this title was not formally declared by parliament to appertain to the crown till the ensuing session of parliament.[1]

By these means was the church of England altogether emancipated from the superiority of that of Rome. For as to the pope's merely spiritual primacy and authority in matters of faith, which are, or at least were, defended by catholics of the Gallican or Cisalpine school on quite different grounds from his jurisdiction or his legislative power in points of discipline, they seem to have attracted little peculiar attention at the time, and to have dropped off as a dead branch, when the axe had lopped the fibres that gave it nourishment. Like other momentous revolutions, this divided the judgment and feelings of the nation. In the previous affair of Catherine's divorce, generous minds were more influenced by the rigour and indignity of her treatment, than by the king's inclinations, or the venal opinions of foreign doctors in law. Bellay, bishop of Bayonne, the French ambassador at London, wrote home in 1528, that a revolt was apprehended from the general unpopularity of the divorce. (Burnet, iii. 44.; and App. 24.) Much difficulty was found in procuring the judgments of Oxford and Cambridge against the marriage; which was effected in the former case, as is said, by excluding the masters of arts, the younger and less worldly part of the university, from their right of suffrage. Even so late as 1532, in the pliant house of commons, a member had the boldness to move an address to the king, that he would take back his wife. And this temper of the people seems to have been the great inducement with Henry to postpone any sentence by a domestic jurisdiction, so long as a chance of the pope's sanction remained.

upon him as hostile; for even so late as 1532, Dr. Bennet, the envoy at Rome, proposed to the pope that the cause should be tried by four commissioners, of whom the king should name one, either sir Thomas More, or Stokesly, bishop of London. Burnet i. 126.

[1] Dr. Lingard has pointed out, as Burnet had done less distinctly, that the bill abrogating the papal supremacy was brought into the commons in the beginning of March, and received the royal assent on the 30th; whereas the determination of the conclave at Rome against the divorce, was on the 23rd; so that the latter could not have been the cause of this final rupture. Clement VII. might have been outwitted in his turn by the king, if, after pronouncing a decree in favour of the divorce, he had found it too late to regain his jurisdiction in England. On the other hand, so flexible were the parliaments of this reign, that, if Henry had made terms with the pope the supremacy might have revived again as easily as it had been extinguished.

The averseness entertained by a large part of the community, and especially of the clerical order, towards the divorce was not perhaps so generally founded upon motives of justice and compassion, as on the obvious tendency which its prosecution latterly manifested to bring about a separation from Rome. Though the principal Lutherans of Germany were far less favourably disposed to the king in their opinions on this subject than the Catholic theologians, holding that the prohibition of marrying a brother's widow in the Levitical law was not binding on Christians, or at least that the marriage ought not to be annulled after so many years' continuance;[1] yet in England the interests of Anne Boleyn and of the Reformation were considered as the same. She was herself strongly suspected of an inclination to the new tenets; and her friend Cranmer had been the most active person both in promoting the divorce, and the recognition of the king's supremacy. The latter was, as I imagine, by no means unacceptable to the nobility and gentry, who saw in it the only effectual method of cutting off the papal exactions that had so long impoverished the realm; nor yet to the citizens of London and other large towns, who, with the same dislike of the Roman court, had begun to acquire some taste for the protestant doctrine. But the common people, especially in remote counties, had been used to an implicit reverence for the holy see, and had suffered comparatively little by its impositions. They looked up also to their own teachers as guides in faith; and the main body of the clergy were certainly very reluctant to tear themselves, at the pleasure of a disappointed monarch, in the most dangerous crisis of religion, from the bosom of Catholic unity. (Strype, i. 151. et alibi.) They complied, indeed, with all the measures of government far more than men of rigid conscience could have endured to do; but many who wanted the courage of More and Fisher, were not far removed from their way of thinking.[2] This repugnance to so great an alteration showed itself,

[1] Conf. Burnet, i. 94. and App. No. 35. Strype, i. 230. Sleidan, Hist. de la Réformation, par Courayer, I. 10. The notions of these divines, as here stated, are not very consistent or intelligible. The Swiss reformers were in favour of the divorce, though they advised that the princess Mary should not be declared illegitimate. Luther seems to have inclined towards compromising the difference by the marriage of a secondary wife. Lingard, p. 172. Melancthon, this writer says, was of the same opinion. Burnet indeed, denies this; but it is rendered not improbable by the well-authenticated fact that these divines, together with Bucer, signed a permission to the landgrave of Hesse to take a wife or concubine, on account of the drunkenness and disagreeable person of his landgravine. Bossuet, Hist. des Var. des Egl. Protest. vol. i., where the instrument is published. Clement VII., however, recommended the king to marry immediately, and then prosecute his suit for a divorce, which it would be easier for him to obtain in such circumstances. This was as early as January, 1528. (Burnet, i. App. p. 27.) But at a much later period, September, 1530, he expressly suggested the expedient of allowing the king to retain two wives. Though the letter of Cassali, the king's ambassador at Rome, containing this proposition, was not found by Burnet, it is quoted at length by an author of unquestionable veracity, Lord Herbert. Henry had himself, at one time, favoured this scheme, according to Burnet, who does not, however, produce any authority for the instructions to that effect said to have been given to Brian and Vannes, despatched to Rome at the end of 1528. But at the time when the pope made this proposal, the king had become exasperated against Catherine, and little inclined to treat either her or her holy see with any respect.

[2] Strype, passim. Tunstal, Gardiner, and Bonner wrote in favour of the royal supremacy; all of them, no doubt, insincerely. The first of these has escaped severe censure by the mildness of his general character, but was full as much a temporiser as Cranmer. But the history of this period has been written with such undisguised partiality, by Burnet and Strype on the one hand, and lately by Dr. Lingard on the other, that it is almost amusing to find the most opposite conclusions and general results from nearly the same premises. Collier, though with many prejudices of his own, is, all things considered, the fairest of our ecclesiastical writers as to this reign.

above all, in the monastic orders, some of whom by wealth, hospitality, and long-established dignity, others by activity in preaching and confessing, enjoyed a very considerable influence over the poorer class. But they had to deal with a sovereign, whose policy as well as temper dictated that he had no safety but in advancing; and their disaffection to his government, while it overwhelmed them in ruin, produced a second grand innovation in the ecclesiastical polity of England.

The enormous and, in a great measure, ill-gotten opulence of the regular clergy had long since excited jealousy in every part of Europe. Though the statutes of mortmain under Edward I. and Edward III. had put some obstacle to its increase, yet as these were eluded by licenses of alienation, a larger proportion of landed wealth was constantly accumulating in hands which lost nothing that they had grasped.[1] A writer much inclined to partiality towards the monasteries says that they held not one fifth part of the kingdom; no insignificant patrimony! He adds, what may probably be true, that through granting easy leases, they did not enjoy more than one tenth in value.[2] These vast possessions were very unequally distributed among four or five hundred monasteries. Some abbots, as those of Reading, Glastonbury, and Battle, lived in princely splendour, and were in every sense the spiritual peers and magnates of the realm. In other foundations, the revenues did little more than afford a subsistence for the monks, and defray the needful expenses. As they were in general exempted from episcopal visitation, and intrusted with the care of their own discipline, such abuses had gradually prevailed and gained strength by connivance, as we may naturally expect in corporate bodies of men leading almost of necessity useless and indolent lives, and in whom very indistinct views of moral obligations were combined with a great facility of violating them. The vices that for many ages had been supposed to haunt the monasteries, had certainly not left their precincts in that of Henry VIII. Wolsey, as papal legate, at the instigation of Fox, bishop of Hereford, a favourer of the Reformation, commenced a visitation of the professed as well as secular clergy in 1523, in consequence of the general complaint against their manners. (Strype, i. Append. 19.) This great minister, though not perhaps very rigid as to the morality of the church, was the first who set an example of reforming monastic foundations in the most efficacious manner, by converting their revenues to different purposes. Full of anxious zeal for promoting education, the noblest part of his character, he obtained bulls from Rome suppressing many convents (among which was that of St. Frideswide at Oxford), in order to erect and endow a new college in that university, his favourite work, which after his fall was more completely established by the name of Christ Church.[3] A few more were afterwards extinguished through his instigation; and thus the prejudice against interference with this species of property was somewhat worn off, and men's minds

[1] Burnet, 188. For the methods by which the regulars acquired wealth, fair and unfair, I may be allowed to refer to the View of the Middle Ages, ch. 7., or rather to the sources from which the sketch there given was derived.

[2] Harmer's Specimens of Errors in Burnet.

[3] Burnet. Strype. Wolsey alleged as the ground for this suppression the great wickedness that prevailed therein. Strype says the number was twenty; but Collier, ii. 19, reckons them at forty.

gradually prepared for the sweeping confiscations of Cromwell. The king indeed was abundantly willing to replenish his exchequer by violent means, and to avenge himself on those who gainsayed his supremacy; but it was this able statesman who, prompted both by the natural appetite of ministers for the subject's money, and by a secret partiality towards the Reformation, devised and carried on with complete success, if not with the utmost prudence, a measure of no inconsiderable hazard and difficulty. For such it surely was, under a system of government which rested so much on antiquity, and in spite of the peculiar sacredness which the English attach to all freehold property, to annihilate so many prescriptive baronial tenures, the possessors whereof composed more than a third part of the house of lords, and to subject so many estates which the law had rendered inalienable, to maxims of escheat and forfeiture that had never been held applicable to their tenure. But for this purpose it was necessary, by exposing the gross corruptions of monasteries, both to intimidate the regular clergy, and to excite popular indignation against them. It is not to be doubted that in the visitation of these foundations under the direction of Cromwell, as lord vicegerent of the king's ecclesiastical supremacy, many things were done in an arbitrary manner, and much was unfairly represented.[1] Yet the reports of these visiters are so minute and specific, that it is rather a preposterous degree of incredulity to reject their testimony, whenever it bears hard on the regulars. It is always to be remembered, that the vices to which they bear witness, are not only probable from the nature of such foundations, but are imputed to them by the most respectable writers of preceding ages. Nor do I find that the reports of this visitation were impeached for general falsehood in that age, whatever exaggeration there might be in particular cases. And surely the commendation bestowed on some religious houses as pure and unexceptionable, may afford a presumption that the censure of others was not an indiscriminate prejudging of their merits.[2]

The dread of these visiters soon induced a number of abbots to make surrenders to the king; a step of very questionable legality. But in the next session the smaller convents, whose revenues were less than 200*l.* a year, were suppressed by act of parliament, to the number of three hundred and seventy-six, and their estates vested in the crown. This summary spoliation led to the great northern rebellion soon after-

[1] Collier, though not implicitly to be trusted, tells some hard truths, and charges Cromwell with receiving bribes from several abbeys, in order to spare them, p. 159. This is repeated by Lingard, on the authority of some Cottonian manuscripts. Even Burnet speaks of the violent proceedings of a doctor Loudon towards the monasteries. This man was of infamous character, and became afterwards a conspirator against Cranmer, and a persecutor of protestants.

[2] Burnet, 190. Strype, i. ch. 35; see especially p. 257. Ellis's Letters, ii. 71. We should be on our guard against the Romanising High-Churchmen, such as Collier, and the whole class of antiquaries, Wood, Hearne, Drake, Browne, Willis, &c., &c., who are, with hardly an exception, partial to the monastic orders, and sometimes scarce keep on the mask of protestantism. No one fact can be better supported by current opinion, and that general testimony which carries conviction, than the relaxed and vicious state of those foundations for many ages before their fall. Ecclesiastical writers had not then learned, as they have since, the trick of suppressing what might excite odium against their church, but speak out boldly and bitterly. Thus we find in Wilkins, iii. 630, a bull of Innocent VIII. for the reform of monasteries in England, charging many of them with dissoluteness of life. And this is followed by a severe monition from archbishop Morton to the abbot of St. Alban's, imputing all kinds of scandalous vices to him and his monks. Those who reject at once the reports of Henry's visiters, will do well to consider this. See also Fosbrook's British Monachism, passim

wards. It was in fact not merely to wound the people's strongest impressions of religion, and especially those connected with their departed friends, for whose souls prayers were offered in the monasteries, but to deprive the indigent in many places of succour, and the better rank of hospitable reception. This of course was experienced in a far greater degree at the dissolution of the larger monasteries, which took place in 1540. But Henry having entirely subdued the rebellion, and being now exceedingly dreaded by both the religious parties, this measure produced no open resistance; though there seems to have been less pretext for it on the score of immorality and neglect of discipline than was found for abolishing the smaller convents.[1] These great foundations were all surrendered; a few excepted, which, against every principle of received law, were held to fall by the attainder of their abbots for high treason. Parliament had only to confirm the king's title arising out of these surrenders and forfeitures. Some historians assert the monks to have been turned adrift with a small sum of money. But it rather appears that they generally received pensions not inadequate, and which are said to have been pretty faithfully paid.[2] These, however, were voluntary gifts on the part of the crown. For the parliament which dissolved the monastic foundations, while it took abundant care to preserve any rights of property which private persons might enjoy over the estates thus escheated to the crown, vouchsafed not a word towards securing the slightest compensation to the dispossessed owners.

The fall of the mitred abbots changed the proportions of the two estates which constitute the upper house of parliament. Though the number of abbots and priors to whom writs of summons were directed varied considerably in different parliaments, they always, joined to the twenty-one bishops, preponderated over the temporal peers.[3] It was no longer possible for the prelacy to offer an efficacious opposition to

[1] The preamble of 27 H. 8. c. 28, which gives the smaller monasteries to the king, after reciting that "manifest sin, vicious, carnal, and abominable living, is daily used and committed commonly in such little and small abbeys, priories, and other religious houses of monks, canons, and nuns, where the congregation of such religious persons is under the number of twelve persons," bestows praise on many of the greater foundations, and certainly does not intimate that their fate was so near at hand. Nor is any misconduct alleged or insinuated against the greater monasteries in the act 31 H. 8. c. 13, that abolishes them; which is rather more remarkable, as in some instances the religious had been induced to confess their evil lives and ill deserts. Burnet, 236.

[2] Id. ibid. and Append. p. 151. Collier, 167. The pensions to the superiors of the dissolved greater monasteries, says a writer not likely to spare Henry's government, appear to have varied from 266*l.* to 6*l.* per annum. The priors of cells received generally 13*l.* A few whose services had merited the distinction, obtained 20*l.* To the other monks were allotted pensions of six, four, or two pounds, with a small sum to each at his departure, to provide for his immediate wants. The pensions to nuns averaged about 4*l.* Lingard, vi. 341. He admits that these were ten times their present value in money; and surely they were not unreasonably small. Compare them with those, generally and justly thought munificent, which this country bestows on her veterans at Chelsea and Greenwich. The monks had no right to expect more than the means of that hard fare to which they ought by their rules to have been confined in the convents. The whole revenues were not to be shared among them as private property. It cannot of course be denied, that the compulsory change of life was to many a severe and unmerited hardship; but no great revolution, and the Reformation as little as any, could be achieved without much private suffering.

[3] The abbots sat till the end of the first session of Henry's sixth parliament, the act extinguishing them not having passed till the last day. In the next session they do not appear, the writ of summons not being supposed to give them personal seats. There are indeed so many parallel instances among spiritual lords, and the principle is so obvious, that it would not be worth noticing, but for a strange doubt said to be thrown out by some legal authorities,

the reformation they abhorred. Their own baronial tenure, their high dignity as legislative counsellors of the land, remained; but, one branch as ancient and venerable as their own thus lopped off, the spiritual aristocracy was reduced to play a very secondary part in the councils of the nation. Nor could the protestant religion have easily been established by legal methods under Edward and Elizabeth without this previous destruction of the monasteries. Those who, professing an attachment to that religion, have swollen the clamour of its adversaries against the dissolution of foundations that existed only for the sake of a different faith and worship, seem to me not very consistent or enlightened reasoners. In some, the love of antiquity produces a sort of fanciful illusion; and the very sight of those buildings so magnificent in their prosperous hour, so beautiful even in their present ruin, begets a sympathy for those who founded and inhabited them. In many, the violent courses of confiscation and attainder which accompanied this great revolution excite so just an indignation, that they either forget to ask whether the end might not have been reached by more laudable means, or condemn that end itself either as sacrilege, or at least as an atrocious violation of the rights of property. Others again, who acknowledge that the monastic discipline cannot be reconciled with the modern system of religion, or with public utility, lament only that these ample endowments were not bestowed upon ecclesiastical corporations, freed from the monkish cowl, but still belonging to that spiritual profession, to whose use they were originally consecrated. And it was a very natural theme of complaint at the time, that such abundant revenues as might have sustained the dignity of the crown and supplied the means of public defence without burdening the subject, had served little other purpose than that of swelling the fortunes of rapacious courtiers, and had left the king as necessitous and craving as before.

Notwithstanding these various censures, I must own myself of opinion, both that the abolition of monastic institutions might have been conducted in a manner consonant to justice as well as policy, and that Henry's profuse alienation of the abbey lands, however illaudable in its motive, has proved upon the whole more beneficial to England than any other disposition would have turned out. I cannot until some broad principle is made more obvious than it ever has been to me, do such violence to all common notions on the subject, as to attach an equal inviolability to private and corporate property. The law of hereditary succession, as ancient and universal as that of property itself, the law of testamentary disposition, the complement of the former, so long established in most countries as to seem a natural right, have invested the individual possessor of the soil with such a fictitious immortality, such anticipated enjoyment, as it were, of futurity, that his perpetual ownership could not be limited to the term of his own existence, without what he would justly feel as a real deprivation of property. Nor are the expectancies of children, or other probable heirs, less real possessions, which it is a hardship, if not an absolute injury, to defeat. Yet even this hereditary claim is set aside by the

near the beginning of the late reign, in the case of Pearce, bishop of Rochester, whether, after resigning his see, he would not retain his seat as a lord of parliament; in consequence of which his resignation was not accepted.

laws of forfeiture, which have almost every where prevailed. But in estates held, as we call it, in mortmain, there is no intercommunity, no natural privity of interest, between the present possessor and those who may succeed him; and as the former cannot have any pretext for complaint, if, his own rights being preserved, the legislature should alter the course of transmission after his decease, so neither is any hardship sustained by others, unless their succession has been already designated or rendered probable. Corporate property, therefore appears to stand on a very different footing from that of private individuals; and while all infringements of the established privileges of the latter are to be sedulously avoided, and held justifiable only by the strongest motives of public expediency, I cannot but admit the full right of the legislature to new mould and regulate the former in all that does not involve existing interests upon far slighter reasons of convenience. If Henry had been content with prohibiting the profession of religious persons for the future, and had gradually diverted their revenues instead of violently confiscating them, no protestant could have found it easy to censure his policy.

It is indeed impossible to feel too much indignation at the spirit in which these proceedings were conducted. Besides the hardship sustained by so many persons turned loose upon society, for whose occupations they were unfit, the indiscriminate destruction of convents produced several public mischiefs. The visiters themselves strongly interceded for the nunnery of Godstow, as irreproachably managed, and an excellent place of education; and no doubt some other foundations should have been preserved for the same reason. Latimer, who could not have a prejudice on that side, begged earnestly that the priory of Malvern might be spared, for the maintenance of preaching and hospitality. It was urged for Hexham abbey, that there being not a house for many miles in that part of England, the country would be in danger of going to waste. (Burnet i. Append. 96.) And the total want of inns in many parts of the kingdom must have rendered the loss of these hospitable places of reception a serious grievance. These and probably other reasons ought to have checked the destroying spirit of reform in its career, and suggested to Henry's counsellors that a few years would not be ill consumed in contriving new methods of attaining the beneficial effects which monastic institutions had not failed to produce, and in preparing the people's minds for so important an innovation.

The suppression of monasteries poured in an instant such a torrent of wealth upon the crown, as has seldom been equalled in any country by the confiscations following a subdued rebellion. The clear yearly value was rated at 131,607*l.*: but was in reality, if we believe Burnet, ten times as great; the courtiers undervaluing those estates, in order to obtain grants or sales of them more easily. It is certain, however, that Burnet's supposition errs extravagantly on the other side.[1] The moveables of the smaller monasteries alone were reckoned at 100,000*l.*;

[1] P. 268. Dr. Lingard, on the authority of Nasmith's edition of Tanner's Notitia Monastica, puts the annual revenue of all the monastic houses at 142,914*l.* This would only be one twentieth part of the rental of the kingdom, if Hume was right in estimating that at three millions. But this is certainly by much too high. The author of Harmer's Observations on Burnet, as I have mentioned above, says the monks will be found not to have possessed above

and as the rents of these were less than a fourth of the whole, we may calculate the aggregate value of moveable wealth in the same proportion. All this was enough to dazzle a more prudent mind than that of Henry, and to inspire those sanguine dreams of inexhaustible affluence, with which private men are so often filled by sudden prosperity.

The monastic rule of life being thus abrogated, as neither conformable to pure religion nor to policy, it is to be considered, to what uses these immense endowments ought to have been applied. There are some perhaps who may be of opinion, that the original founders of monasteries, or those who had afterwards bestowed lands on them, having annexed to their grants an implied condition of the continuance of certain devotional services, and especially of prayers for the repose of their souls, it were but equitable, that if the legislature rendered the performance of this condition impossible, their heirs should re-enter upon the lands that would not have been alienated from them on any other account. But without adverting to the difficulty in many cases of ascertaining the lawful heir, it might be answered that the donors had absolutely divested themselves of all interest in their grants, and that it was more consonant to the analogy of law to treat these estates as escheats or vacant possessions, devolving to the sovereign, than to imagine a right of reversion that no party had ever contemplated. There was, indeed, a class of persons, very different from the founders of monasteries, to whom restitution was due. A large proportion of conventual revenues arose out of parochial tithes, diverted from the legitimate object of maintaining the incumbent to swell the pomp of some remote abbot. These impropriations were in no one instance, I believe, restored to the parochial clergy, and have passed either into the hands of laymen, or of bishops and other ecclesiastical persons, who were frequently compelled by the Tudor princes to take them in exchange for lands.[1] It was not in the spirit of Henry's policy, or in that of the times, to preserve much of these revenues to the church, though he had designed to allot 18,000*l.* a year for eighteen new sees, of which he only erected six, with far inferior endowments. Nor was he much better inclined to husband them for public exigencies, although more than sufficient to make the crown independent of parliamentary aid. It may, perhaps, be reckoned a providential circumstance, that his thoughtless humour should have rejected the obvious means of establishing an uncontrollable despotism, by rendering unnecessary the only exertion of power which his subjects were likely to withstand. Henry VII. would probably have followed a very different course. Large sums, however, are said to have been expended in the repair of

one fifth of the kingdom, and in value, by reason of their long leases, not one tenth. But, on this supposition, the crown's gain was enormous.

According to a valuation in Speed's Catalogue of Religious Houses, apud Collier, Append. p. 34., sixteen mitred abbots had revenues above 1000*l.* per annum. St. Peter's, Westminster, was the richest, and valued at 3977*l.*, Glastonbury at 3508*l.*, St. Alban's at 2510*l.*, &c.

[1] An act entitling the queen to take into her hands, on the voidance of any bishopric, so much of the lands belonging to it as should be equal in value to the impropriate rectories, &c., within the same, belonging to the crown, and to give the latter in exchange, was made 1 Eliz. c. 19. This bill passed on a division in the commons by 104 to 90, and was ill taken by some of the bishops, who saw themselves reduced to live on the lawful subsistence of the parochial clergy. Strype's Annals, i. 68. 97.

highways, and in fortifying ports in the Channel.[1] But the greater part was dissipated in profuse grants to the courtiers, who frequently contrived to veil their acquisitions under cover of a purchase from the crown. It has been surmised that Cromwell, in his desire to promote the Reformation, advised the king to make this partition of abbey lands among the nobles and gentry, either by grant, or by sale on easy terms, that being thus bound by the sure ties of private interest, they might always oppose any return towards the dominion of Rome. (Burnet, i. 223.) In Mary's reign accordingly, her parliament, so obsequious in all matters of religion, adhered with a firm grasp to the possession of church lands; nor could the papal supremacy be re-established until a sanction was given to their enjoyment. And we may ascribe part of the zeal of the same class in bringing back and preserving the reformed church under Elizabeth to a similar motive; not that these gentlemen were hypocritical pretenders to a belief they did not entertain, but that, according to the general laws of human nature, they gave a readier reception to truths which made their estates more secure.

But if the participation of so many persons in the spoils of ecclesiastical property gave stability to the new religion, by pledging them to its support, it was also of no slight advantage to our civil constitution, strengthening, and as it were infusing new blood into the territorial aristocracy, who were to withstand the enormous prerogative of the crown. For if it be true, as surely it is, that wealth is power, the distribution of so large a portion of the kingdom among the nobles and gentry, the elevation of so many new families, and the increased opulence of the more ancient, must have sensibly affected their weight in the balance. Those families indeed, within or without the bounds of the peerage, which are now deemed the most considerable, will be found, with no great number of exceptions, to have first become conspicuous under the Tudor line of kings; and if we could trace the titles of their estates, to have acquired no small portion of them, mediately or immediately, from monastic or other ecclesiastical foundations. And better it has been that these revenues should thus from age to age have been expended in liberal hospitality, in discerning charity, in the promotion of industry and cultivation, in the active duties or even generous amusements of life, than in maintaining a host of ignorant and inactive monks, in deceiving the populace by superstitious pageantry, or in the encouragement of idleness and mendicity.[2]

[1] Burnet, 268, 339. In Strype, i. 211., we have a paper drawn up by Cromwell for the king's inspection, setting forth what might be done with the revenues of the lesser monasteries. Among a few other particulars are the following:—"His grace may furnish 200 gentlemen to attend on his person, every one of them to have 100 marks yearly—20,000 marks. His highness may assign to the yearly reparation of highways in sundry parts, or the doing of other good deeds for the commonwealth, 5000 marks." In such scant proportion did the claims of public utility come after those of selfish pomp, or rather perhaps, looking more attentively, of cunning corruption.

[2] It is a favourite theory with many who regret the absolute secularisation of conventual estates, that they might have been rendered useful to learning and religion by being bestowed on chapters and colleges. Thomas Whitaker has sketched a pretty scheme for the abbey of Whalley, wherein, besides certain opulent prebendaries, he would provide for schoolmasters and physicians. I suppose this is considered an adherence to the donor's intention, and no sort of violation of property; somewhat on the principle called CY PRES, adopted by the court

A very ungrounded prejudice had long obtained currency, and notwithstanding the contradiction it has experienced in our more accurate age, seems still not eradicated, that the alms of monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief, now so much the topic of complaint, was rendered necessary by the dissolution of those beneficent foundations. There can be no doubt, that many of the impotent poor derived support from their charity. But the blind eleemosynary spirit inculcated by the Romish church is notoriously the cause, not the cure, of beggary and wretchedness. The monastic foundations, scattered in different counties, but by no means at regular distances, could never answer the end of local and limited succour, meted out in just proportion to the demands of poverty. Their gates might indeed be open to those who knocked at them for alms, and came in search of streams that must always be too scanty for a thirsty multitude. Nothing could have a stronger tendency to promote that vagabond mendicity, which unceasing and very severe statutes were enacted to repress. It was and must always continue a hard problem, to discover the means of rescuing those whom labour cannot maintain from the last extremities of helpless suffering. The regular clergy were in all respects ill fitted for this great office of humanity. Even while the monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature, by means of regular collections, which in the course of a long series of statutes, ending in the 43d of Elizabeth, were almost insensibly converted into compulsory assessments.[1] It is by no means probable that, however some in particular districts may have had to lament the cessation of hospitality in the convents, the poor in general were placed in a worse condition by their dissolution; nor are we to forget that the class to whom the abbey lands have fallen have been renowned at all times, and never more than in the first century after that transference of property, for their charity and munificence.

These two great political measures, the separation from the Roman see, and the suppression of monasteries, so broke the vast power of the English clergy, and humbled their spirit, that they became the

of chancery in cases of charitable bequests; according to which that tribunal, if it holds the testator's intention unfit to be executed, carries the bequest into effect by doing what it presumes to come next in his wishes, though sometimes very far from them. It might be difficult indeed to prove that a Norman baron, who, not quite easy about his future prospects, took comfort in his last hours from the anticipation of daily masses for his soul, would have been better satisfied that his lands should maintain a grammar-school, than that they should escheat to the crown. But to waive this, and to revert to the principle of public utility, it may possibly be true that, in one instance, such as Whalley, a more beneficial disposition could have been made in favour of a college, than by granting away the lands. But the question is, whether all, or even a great part, of the monastic estates could have been kept in mortmain with advantage. We may easily argue, that the Derwentwater property, applied as it has been, has done the state more service, than if it had gone to maintain a race of Radcliffes, and been squandered at White's or Newmarket. But does it follow, that the kingdom would be the more prosperous, if all the estates of the peerage were diverted to similar endowments? And can we seriously believe, that if such a plan had been adopted at the suppression of monasteries, either religion or learning would have been the better for such a glut of prebendaries and school-masters?

[1] The first act for relief of the impotent poor passed in 1535 (37 H. 8. c. 25.) By this statute no alms were allowed to be given to beggars, on pain of forfeiting ten times the value, but a collection was to be made in every parish. The compulsory contributions, properly speaking, began in 1572, 14 Eliz. c. 5. But by an earlier statute, 1 Edw. 6. c. 3., the bishop was empowered to proceed in his court against such as should refuse to contribute, or dissuade others from doing so.

most abject of Henry's vassals, and dared not offer any steady opposition to his caprice, even when it led him to make innovations in the essential parts of their religion. It is certain that a large majority of that order would gladly have retained their allegiance to Rome, and that they viewed with horror the downfall of the monasteries. In rending away so much that had been incorporated with the public faith, Henry seemed to prepare the road for the still more radical changes of the reformers. These, a numerous and increasing sect, exulted by turns in the innovations he promulgated, lamented their dilatoriness and imperfection, or trembled at the re-action of his bigotry against themselves. Trained in the school of theological controversy, and drawing from those bitter waters fresh aliment for his sanguinary and imperious temper, he displayed the impartiality of his intolerance by alternately persecuting the two conflicting parties. We all have read how three persons convicted of disputing his supremacy, and three deniers of transubstantiation, were drawn on the same hurdle to execution. But the doctrinal system adopted by Henry in the latter years of his reign, varying indeed in some measure from time to time, was about equally removed from popish and protestant orthodoxy. The corporal presence of Christ in the consecrated elements was a tenet which no one might dispute without incurring the penalty of death by fire: and the king had a capricious partiality to the Romish practice in those very points where a great many real catholics on the Continent were earnest for its alteration, the communion of the laity by bread alone, and the celibacy of the clergy. But in several other respects he was wrought upon by Cranmer to draw pretty near to the Lutheran creed, and to permit such explications to be given in the books set forth by his authority, the Institution, and the Erudition, of a Christian Man, as, if they did not absolutely proscribe most of the ancient opinions, threw at best much doubt upon them, and gave intimations which the people, now become attentive to these questions, were acute enough to interpret.[1]

It was natural to suspect, from the previous temper of the nation, that the revolutionary spirit which blazed out in Germany should spread rapidly over England. The enemies of ancient superstition at home, by frequent communication with the Lutheran and Swiss reformers, acquired not only more enlivening confidence, but a surer and more definite system of belief. Books printed in Germany or in the Flemish provinces, where at first the administration connived at the new religion, were imported and read with that eagerness and delight which always compensate the risk of forbidden studies.[2] Wolsey, who had no turn towards persecution, contented himself with ordering heretical writings to be burned, and strictly prohibiting their importation. But to with-

[1] The Institution was printed in 1537; the Erudition, according to Burnet, in 1540; but in Collier and Strype's opinion, not till 1543. They are both artfully drawn, probably in the main by Cranmer, but not without the interference of some less favourable to the new doctrine, and under the eye of the king himself. Collier, 137, 189. The doctrinal variations in these two summaries of royal faith are by no means inconsiderable.

[2] Strype, i. 165. A statute enacted in 1534 (25 H. 8. c. 15.), after reciting that "at this day there be within this realm a great number cunning and expert in printing, and as able to execute the said craft as any stranger," proceeds to forbid the sale of bound books imported from the Continent. A terrible blow was thus levelled both against general literature and the reformed religion; but, like many other bad laws it produced very little effect.

stand the course of popular opinion is always like a combat against the elements in commotion; nor is it likely that a government far more steady and unanimous than that of Henry VIII. could have effectually prevented the diffusion of protestantism. And the severe punishment of many zealous reformers, in the subsequent part of this reign, tended, beyond a doubt, to excite a favourable prejudice for men whose manifest sincerity, piety, and constancy in suffering, were as good pledges for the truth of their doctrine, as the people had been always taught to esteem the same qualities in the legends of the early martyrs. Nor were Henry's persecutions conducted upon the only rational principle, that of the inquisition, which judges from the analogy of medicine, that a deadly poison cannot be extirpated but by the speedy and radical excision of the diseased part; but falling only upon a few of a more eager and officious zeal, left a well-grounded opinion among the rest, that by some degree of temporising prudence they might escape molestation till a season of liberty should arrive.

One of the books originally included in the list of proscription among the writings of Luther and the foreign Protestants, was a translation of the New Testament into English by Tindal, printed at Antwerp in 1526. A complete version of the Bible, partly by Tindal, and partly by Coverdale, appeared, perhaps at Hamburg, in 1535; a second edition, under the name of Matthews, following in 1537; and as Cranmer's influence over the king became greater, and his aversion to the Roman church more inveterate, so great a change was made in the ecclesiastical policy of this reign, as to direct the Scriptures in this translation, but with corrections in many places, to be set up in parish churches, and permit them to be publicly sold.[1] This measure had a strong tendency to promote the Reformation, especially among those who were capable of reading; not surely that the controverted doctrines of the Romish church are so indisputably erroneous as to bear no sort of examination, but because such a promulgation of the Scrip-

[1] The accounts of early editions of the English Bible in Burnet, Collier, Strype, and an essay by Johnson in Watson's Theological Tracts, vol. iii., are erroneous or defective. A letter of Strype in Harleian MSS. 3782,, which has been printed, is better; but the most complete enumeration is in Cotton's list of editions, 1821. The dispersion of the Scriptures, with full liberty to read them, was greatly due to Cromwell, as is shown by Burnet. Even after his fall, a proclamation, dated May 6. 1542, referring to the king's former injunctions for the same purpose, directs a large Bible to be set up in every parish church. But, next year, the duke of Norfolk and Gardiner prevailing over Cranmer, Henry retraced a part of his steps; and the act 34 H. 8. c. 1. forbids the sale of Tindal's "false translation," and the reading of the Bible in churches, or by yeomen, women, and other incapable persons. The popish bishops, well aware how much turned on this general liberty of reading the Scriptures, did all in their power to discredit the new version. Gardiner made a list of about one hundred words which he thought unfit to be translated, and which, in case of an authorised version, whereof the clergy in convocation had reluctantly admitted the expediency, ought in his opinion, to be left in Latin. Tindal's translation may, I apprehend, be reckoned the basis of that now in use, but has undergone several corrections before the last. It has been a matter of dispute whether it were made from the original languages or from the Vulgate. Hebrew and even Greek were very little known in England at that time.

The edition of 1537, called Matthews's Bible, printed by Grafton, contains marginal notes reflecting on the corruptions of popery. These it was thought expedient to suppress in that of 1539, commonly called Cranmer's Bible, as having been revised by him, and in later editions. In all these editions of Henry's reign, though the version is properly Tindal's, there are, as I am informed, considerable variations and amendments. Thus, in Cranmer's Bible, the word *ecclesia* is always rendered congregation, instead of church; either as the primary meaning, or, more probably, to point out that the laity had a share in the government of a Christian society.

tures at that particular time seemed both tacitly to admit the chief point of contest, that they were the exclusive standard of Christian faith, and to lead the people to interpret them with that sort of prejudice which a jury would feel in considering evidence that one party in a cause had attempted to suppress; a danger which those who wish to restrain the course of free discussion without very sure means of success will in all ages do well to reflect upon.

The great change of religious opinions was not so much effected by reasoning on points of theological controversy, upon which some are apt to fancy it turned, as on a persuasion that fraud and corruption pervaded the established church. The pretended miracles, which had so long held the understanding in captivity, were wisely exposed to ridicule and indignation by the government. Plays and interludes were represented in churches, of which the usual subject was the vices and corruptions of the monks and clergy. These were disapproved of by the graver sort, but no doubt served a useful purpose.[1] The press sent forth its light hosts of libels; and though the catholic party did not fail to try the same means of influence, they had both less liberty to write as they pleased, and fewer readers than their antagonists.

In this feverish state of the public mind on the most interesting subject, ensued the death of Henry VIII., who had excited and kept it up. More than once during the latter part of his capricious reign, the popish party, headed by Norfolk and Gardiner, had gained an ascendant; and several persons had been burned for denying transubstantiation. But at the moment of his decease, Norfolk was a prisoner attainted of treason, Gardiner in disgrace, and the favour of Cranmer at its height. It is said that Henry had meditated some further changes in religion. Of his executors, the greater part, as their subsequent conduct evinces, were nearly indifferent to the two systems, except so far as more might be gained by innovation. But Somerset, the new protector, appears to have inclined sincerely towards the Reformation, though not wholly uninfluenced by similar motives. His authority readily overcame all opposition in the council: and it was soon perceived, that Edward, whose singular precocity gave his opinions in childhood an importance not wholly ridiculous, had imbibed a steady and ardent attachment to the new religion, which probably, had he lived longer, would have led him both to diverge farther from what he thought an idolatrous superstition, and to have treated its adherents with severity.[2] Under his reign, accordingly, a series of alterations in

[1] Burnet, 318. Strype's Life of Parker, 18. Collier (187.) is of course much scandalised. In his view of things, it had been better to give up the Reformation entirely, then to suffer one reflection on the clergy. These dramatic satires on that order had also an effect in promoting the Reformation in Holland. Brandt's History of Reformation in Low Countries, vol. i. p. 128.

[2] I can hardly avoid doubting, whether Edward VI.'s Journal, published in the second volume of Burnet, be altogether his own; because it is strange for a boy of ten years old to write with the precise brevity of a man of business. Yet it is hard to say how far an intercourse with able men on serious subjects may force a royal plant of such natural vigour; and his letters to his young friend Barnaby Fitzpatrick, published by H. Walpole in 1774, are quite unlike the style of a boy. One could wish this journal not to be genuine; for the manner in which he speaks of both his uncles' execution does not show a good heart. Unfortunately, however, there is a letter extant, of the king to Fitzpatrick, which must be genuine, and is in the same strain. He treated his sister Mary harshly about her religion, and had, I suspect, too much Tudor blood in his veins. It is certain that he was a very extraordinary boy, or, as

the tenets and homilies of the English church were made, the principal of which I shall point out, without following a chronological order, or adverting to such matters of controversy as did not produce a sensible effect on the people.

1. It was obviously among the first steps required in order to introduce a mode of religion at once more reasonable and more earnest than the former, that the public services of the church should be expressed in the mother tongue of the congregation. The Latin ritual had been unchanged ever since the age when it was familiar; partly through a sluggish dislike of innovation, but partly also because the mysteriousness of an unknown dialect served to impose on the vulgar, and to throw an air of wisdom around the priesthood. Yet what was thus concealed would have borne the light. Our own liturgy, so justly celebrated for its piety, elevation, and simplicity, is in great measure a translation from the catholic services, those portions of course being omitted which had relation to different principles of worship. In the second year of Edward's reign, the reformation of the public service was accomplished, and an English liturgy compiled not essentially different from that in present use.[1]

2. No part of exterior religion was more prominent, or more offensive to those who had imbibed a protestant spirit, than the worship, or at least veneration of images, which in remote and barbarous ages had given excessive scandal both in the Greek and Latin churches, though long fully established in the practice of each. The populace, in towns where the reformed tenets prevailed, began to pull them down in the very first days of Edward's reign; and after a little pretence at distinguishing those which had not been abused, orders were given that all images should be taken away from churches. It was perhaps necessary thus to hinder the zealous protestants from abating them as nuisances, which had already caused several disturbances.[2] But this order was executed with a rigour which lovers of art and antiquity have long deplored. Our churches bear witness to the devastation committed in the wantonness of triumphant reform, by defacing statues and crosses on the exterior of buildings intended for worship, or windows and monuments within. Missals and other books dedicated to superstition perished in the same manner. Altars were taken down, and a great variety of ceremonies abrogated; such as the use of incense, tapers, and holy water; and though more of these were retained than eager innovators could approve, the whole surface of religious ordinances, all that is palpable to common minds, underwent a surprising transformation.

3. But this change in ceremonial observances and outward show was trifling when compared to that in the objects of worship, and in

Cardan calls him, monstrificus puellus; and the reluctance with which he yielded, on the solicitations of Cranmer, to sign the warrant for burning Joan Boucher, is as much to his honour as it is against the archbishop's.

[1] The litany had been translated into English in 1542. Burnet, i. 331. Collier, III.; where it may be read, not much differing from that now in use. It was always held out by our church, when the object was conciliation, that the liturgy was essentially the same with the massbook. Strype's Annals, ii. 39. Hollingshed, iii. 921. (4to. edition.)

[2] "It was observed," says Strype, ii. 79., "that where images were left there was most contest, and most peace where they were all sheer pulled down, as they were in some places."

the purposes for which they were addressed. Those who have visited some catholic temples, and attended to the current language of devotion, must have perceived, what the writings of apologists or decrees of councils will never enable them to discover, that the saints, but more especially the Virgin, are almost exclusively the POPULAR deities of that religion. All this polytheism was swept away by the reformers; and in this may be deemed to consist the most specific difference of the two systems. Nor did they spare the belief in purgatory, that unknown land which the hierarchy swayed with so absolute a rule, and to which the earth had been rendered a tributary province. Yet in the first liturgy put forth under Edward, the prayers for departed souls were retained; whether out of respect to the prejudices of the people, or to the immemorial antiquity of the practice. But such prayers, if not necessarily implying the doctrine of purgatory, which, yet, in the main, they appear to do, are at least so closely related to it, that the belief could never be eradicated while they remained. Hence, in the revision of the liturgy, four years afterwards, they were laid aside[1]; and several other changes made to eradicate the vestiges of the ancient superstition.

4. Auricular confession, as commonly called, or the private and special confession of sins to a priest, for the purpose of obtaining his absolution, an imperative duty in the church of Rome, and preserved as such in the statute of the six articles, and in the religious codes published by Henry VIII., was left to each man's discretion in the new order; a judicious temperament, which the reformers would have done well to adopt in some other points. And thus, while it has never been condemned in our church, it went without dispute into complete neglect. Those who desire to augment the influence of the clergy regret, of course, its discontinuance; and some may conceive that it would serve either for wholesome restraint, or useful admonition. It is very difficult, or perhaps beyond the reach of any human being, to determine absolutely, how far these benefits, which cannot be reasonably denied to result in some instances from the rite of confession, outweigh the mischiefs connected with it. There seems to be something in the Roman catholic discipline, and I know nothing else so likely, which keeps the balance, as it were, of moral influence pretty even between the two religions, and compensates for the ignorance and superstition which the elder preserves: for I am not sure that the protestant system in the present age has any very sensible advantage in this respect; or that in countries where the comparison can fairly be made, as in Germany or Switzerland, there is more honesty in one sex, or more chastity in the other, when they belong to the reformed churches. Yet, on the other hand, the practice of confession is at the best of very doubtful utility, when considered in its full extent and general bearings. The ordinary confessor, listening mechanically to hundreds of penitents, can hardly preserve much authority over most

[1] Collier, p. 257., enters into a vindication of the practice, which appears to have prevailed in the church from the second century. It was defended in general by the nonjurors, and the whole school of Andrews. But, independently of its wanting the authority of Scripture, which the reformers set up exclusively of all tradition, it contradicted the doctrine of justification by mere faith, in the strict sense which they affixed to that tenet. See preamble of the act for dissolution of chantries, 1 Edw. 6. c. 14.

of them. But in proportion as his attention is directed to the secrets of conscience, his influence may become dangerous; men grow accustomed to the control of one perhaps more feeble and guilty than themselves, but over whose frailties they exercise no reciprocal command; and, if the confessors of kings have been sometimes terrible to nations, their ascendency is probably not less mischievous, in proportion to its extent, within the sphere of domestic life. In a political light, and with the object of lessening the weight of the ecclesiastical order in temporal affairs, there cannot be the least hesitation as to the expediency of discontinuing the usage.[1]

5. It has very rarely been the custom of theologians to measure the importance of orthodox opinions by their effect on the lives and hearts of those who adopt them; nor was this predilection for speculative above practical doctrines ever more evident than in the leading controversy of the sixteenth century, that respecting the Lord's supper. No errors on this point could have had any influence on men's moral conduct, nor indeed much on the general nature of their faith; yet it was selected as the test of heresy; and most, if not all, of those who suffered death upon that charge, whether in England or on the Continent, were convicted of denying the corporal presence in the sense of the Roman church. It had been well if the reformers had learned, by abhorring her persecution, not to practise it in a somewhat less degree upon each other, or by exposing the absurdities of transubstantiation, not to contend for equal nonsense of their own. Four principal theories, to say nothing of subordinate varieties, divided Europe at the accession of Edward VI. about the sacrament of the eucharist. The church of Rome would not depart a single letter from transubstantiation, or the change, at the moment of consecration, of the substances of bread and wine into those of Christ's body and blood; the accidents, in school language, or sensible qualities of the former remaining, or becoming inherent in the new substance. This doctrine does not, as vulgarly supposed, contradict the evidence of our senses; since our senses can report nothing as to the unknown being, which the schoolmen denominated substance, and which alone was the subject of this conversion. But metaphysicians of later ages might inquire whether material substances, abstractedly considered, exist at all, or, if they exist, whether they can have any specific distinction except their sensible qualities. This, perhaps, did not suggest itself in the sixteenth century; but it was strongly objected that the simultaneous existence of a body in many places, which the Romish doctrine implied, was inconceivable, and even contradictory. Luther, partly, as it seems, out of his determination to multiply differences with the church, invented a theory somewhat different, usually called consubstantiation, which was adopted in the confession of Augsburg, and to which, at least down to the middle of the seventeenth century, the divines of that communion were much attached. They imagined the two substances to be united in the sacramental elements, so that they might be termed bread and wine, or the body and blood, with equal

[1] Collier, p. 248., descants, in the true spirit of a high churchman, on the importance of confession. This also, as is well known, is one of the points on which his party disagreed with the generality of protestants.

propriety.[1] But it must be obvious that there is merely a scholastic distinction between this doctrine and that of Rome; though, when it suited the Lutherans to magnify, rather than dissemble, their deviations from the mother church, it was raised into an important difference. A simpler and more rational explication occurred to Zuingle and Œcolampadius, from whom the Helvetian protestants imbibed their faith. Rejecting every notion of a real presence, and divesting the institution of all its mystery, they saw only figurative symbols in the elements which Christ had appointed as a commemoration of his death. But this novel opinion excited as much indignation in Luther as in the Romanists. It was indeed a rock on which the Reformation was nearly shipwrecked; since the violent contests which it occasioned, and the narrow intolerance which one side at least displayed throughout the controversy, not only weakened, on several occasions, the temporal power of the protestant churches, but disgusted many of those who might have inclined towards espousing their sentiments. Besides these three hypotheses, a fourth was promulgated by Martin Bucer of Strasburgh, a man of much acuteness, but prone to metaphysical subtilty, and not, it is said, of a very ingenuous character. His theory upon the sacrament of the Lord's supper, after having been adopted with little variation by Calvin, was finally received into some of the offices of the English church. If the Roman and Lutheran doctrines teemed with unmasked absurdity, this middle system, if indeed it is to be considered as a genuine opinion, and not rather a politic device,[2] had no advantage but in the disguise of unmeaning terms; while it had the peculiar infelicity of departing as much from the literal sense of the words of institution, wherein the former triumphed, as the Zuinglian interpretation itself. I know not whether I can state in language tolerably perspicuous this obsolete metaphysical theology. But Bucer, as I apprehend, though his expressions are unusually confused, did not acknowledge a local presence of Christ's body and blood in the elements after consecration,—so far concurring with the Helvetians; while he contended that they were really, and without figure, received by the worthy communicant through faith, so as to preserve the belief of a mysterious union, and of what was sometimes called a real presence. It can hardly fail to strike every unprejudiced reader that a material substance can only in a very figurative sense be said to be received through faith; that there can be no real presence of such a body consistently with the proper use of language, but by its local occupation of space; and that as the Romish tenet of transubstantiation is the best, so this of the Calvinists is the worst imagined of the three that have been opposed to the simplicity of the Helvetic explanation. Bucer himself came to England early in the reign of Edward,

[1] Nostra sententia est, says Luther, apud Burnet, III. Appendix, 194, corpus ita cum pane, seu in pane esse, ut revera cum pane manducetur, et quemcunque motum vel actionem panis habet, eundem et corpus Christi.

[2] "Bucer thought, that for avoiding contention, and for maintaining peace and quietnes in the church, somewhat more ambiguous words should be used, that might have a respect both persuasions concerning the presence. But Martyr was of another judgment, and affecte to speak of the sacrament with all plainness and perspicuity." Strype. ii, 121. The truth is, that there were but two opinions at the bottom as to this main point of the controversy; no in the nature of things was it possible that there should be more; for what can be predicated concerning a body, in its relation to a given space, but presence and absence?

and had a considerable share in advising the measures of reformation. But Peter Martyr, a disciple of the Swiss school, had also no small influence. In the forty-two articles set forth by authority, the real or corporal presence, using these words as synonymous, is explicitly denied. This clause was omitted on the revision of the articles under Elizabeth.[1]

6. These various innovations were exceedingly inimical to the influence and interests of the priesthood. But that order obtained a sort of compensation in being released from its obligation to celibacy. This obligation, though unwarranted by scripture, rested on a most ancient and universal rule of discipline; for though the Greek and Eastern churches have always permitted the ordination of married persons, yet they do not allow those already ordained to take wives. No very good reason, however, could be given for this distinction; and the constrained celibacy of the Latin clergy had given rise to mischiefs of which their general practice of retaining concubines might be reckoned among the smallest.[2] The German protestants soon rejected this burden, and encouraged regular as well as secular priests to marry. Cranmer had himself taken a wife in Germany, whom Henry's law of the Six Articles, one of which made the marriage of priests felony, compelled him to send away. In the reign of Edward this was justly reckoned an indispensable part of the new Reformation. But the bill for that purpose passed the lords with some little difficulty, nine bishops and four peers dissenting; and its preamble cast such an imputation on the practice it allowed, treating the marriage of priests as ignominious and a tolerated evil, that another act was thought necessary a few years afterwards, when the Reformation was better established, to vindicate this right of the protestant church.[3] A great number of the clergy availed themselves of their liberty; which may probably have had as extensive an effect in conciliating the ecclesiastical profession, as the suppression of monasteries had in rendering the gentry favourable to the new order of religion.

But great as was the number of those whom conviction or self-interest enlisted under the protestant banner, it appears plain that the Reformation moved on with too precipitate a step for the majority.

[1] Burnet, ii. 105. App. 216. Strype, ii. 121. 208. Collier, &c. The Calvinists certainly did not own a local presence in the elements. It is the artifice of modern Romish writers, Dr. Milner, Mr. C. Butler, &c., to distinguish the incompatibility of their tenets with those of the church of England on this, as they do on all other topics of controversy, by representing her as maintaining an actual, incomprehensible presence of Christ's body in the consecrated elements; which was never meant to be asserted by the authorised exposition of faith; though in the seventeenth century it was held by many distinguished churchmen. See the 27th, 28th, and 29th articles of religion. Great advantage is given to the opposite side in this controversy, by the want of acuteness or correct knowledge in our ecclesiastical partizans. An eminent living writer, who would be as useful as he is agreeable, if he could bring himself to write with less heat and haste, says, "that at Elizabeth's succession, among other changes, the language of the article which affirmed a real presence was so framed as to allow latitude of belief for those who were persuaded of an exclusive one." Southey's Book of the Church, vol. ii. p. 247. The real presence was not affirmed, but denied, in the original draft; and as to what Mr. S. calls "an exclusive one," that is, transubstantiation, if the words have any meaning, it is positively rejected in the amended articles.

[2] It appears to have been common for the clergy, by license from their bishops, to retain concubines, who were, Collier says, for the most part their wives, p. 262. But I do not clearly understand in what the distinction could have consisted; for it seems unlikely that marriages of priests were ever solemnised at so late a period; or if they were, they were invalid.

[3] Stat. 2 & 3. Edw. VI. c. 21. 5 & 6 Edw. c. 12. Burnet, 89.

The new doctrines prevailed in London, in many large towns, and in the eastern counties. But in the north and west of England, the body of the people were strictly catholics. The clergy, though not very scrupulous about conforming to the innovations, were generally averse to most of them.[1] And, in spite of the church lands, I imagine that most of the nobility, if not the gentry, inclined to the same persuasion: not a few peers having sometimes dissented from the bills passed on the subject of religion in this reign, while no sort of disagreement appears in the upper house during that of Mary. In the western insurrection of 1549, which partly originated in the alleged grievance of enclosures, many of the demands made by the rebels go to the entire re-establishment of popery. Those of the Norfolk insurgents in the same year, whose political complaints were the same, do not, as far as I perceive, show any such tendency. But an historian, whose bias was certainly not unfavourable to protestantism, confesses that all endeavours were too weak to overcome the aversion of the people towards reformation, and even intimates that German troops were sent for from Calais on account of the bigotry with which the bulk of the nation adhered to the old superstition.[2] This is somewhat an humiliating admission, that the protestant faith was imposed upon our ancestors by a foreign army. And as the reformers, though still the fewer, were undeniably a great and increasing party, it may be natural to inquire, whether a regard to policy as well as equitable considerations should not have repressed still more, as it did in some measure, the zeal of Cranmer and Somerset? It might be asked, whether, in the acknowledged co-existence of two religions, some preference were not fairly claimed for the creed, which all had once held, and which the greater part yet retained; whether it were becoming that the counsellors of an infant king should use such violence in breaking up the ecclesiastical constitution; whether it were to be expected that a free-spirited people should see their consciences thus transferred by proclamation, and all that they had learned to venerate not only torn away from them, but exposed to what they must reckon blasphemous contumely and profanation? The demolition of shrines and images, far unlike the speculative disputes of theologians, was an overt insult on every catholic heart. Still more were they exasperated at the ribaldry which vulgar protestants uttered against their most sacred mystery. It was found necessary, in the very first act of the first protestant parliament, to denounce penalties against such as spoke irreverently of the sacrament, an indecency not unusual with those who held the Zuinglian opinion in that age of coarse pleasantry and unmixed invective. (2 Edw.

[1] 2 Strype, 53. Latimer pressed the necessity of expelling these temporising conformists, —"Out with them all! I require it in God's behalf: make them *quondams*, all the pack of them." Id. 204. 2 Burnet, 143.

[2] Burnet, iii. 190. 196. "The use of the old religion," says Paget, in remonstrating with Somerset on his rough treatment of some of the gentry, and partiality to the commons, "is forbidden by a law, and the use of the new is not yet printed in the stomachs of eleven out of twelve parts of the realm, whatever countenance men make outwardly to please them in whom they see the power resteth." Strype, ii. Appendix, H. H. This seems rather to refer to the upper classes than to the whole people. But at any rate it was an exaggeration of the fact, the protestants being certainly in a much greater proportion. Paget was the adviser of the scheme of sending for German troops in 1549, which, however, was in order to quell a seditious spirit in the nation, not by any means wholly founded upon religious grounds. Strype, xi. 169.

6. c. 1. Strype, xi. 81.) Nor could the people repose much confidence in the judgment and authority of their governors, whom they had seen submitting without outward repugnance to Henry's various schemes of religion, and whom they saw every day enriching themselves with the plunder of the church they affected to reform. There was a sort of endowed colleges or fraternities, called chantries, consisting of secular priests, whose duty was to say daily masses for the founders. These were abolished and given to the king by acts of parliament in the last year of Henry, and the first of Edward. It was intimated in the preamble of the latter statute, that their revenues should be converted to the erection of schools, the augmentation of the universities, and the sustenance of the indigent.[1] But this was entirely neglected, and the estates fell into the hands of the courtiers. Nor did they content themselves with this escheated wealth of the church. Almost every bishopric was spoiled by their ravenous power in this reign, either through mere alienations, or long leases, or unequal exchanges. Exeter and Llandaff, from being among the richest sees, fell into the class of the poorest. Lichfield lost the chief part of its lands to raise an estate for Lord Paget. London, Winchester, and even Canterbury, suffered considerably. The duke of Somerset was much beloved; yet he had given no unjust offence by pulling down some churches in order to erect Somerset House with the materials. He had even projected the demolition of Westminster Abbey; but the chapter averted this outrageous piece of rapacity, sufficient of itself to characterise that age, by the usual method, a grant of some of their estates.[2]

Tolerance in religion, it is well known, so unanimously admitted, at least verbally, even by theologians in the present century, was scarcely considered as practicable, much less as a matter of right, during the period of the Reformation. The difference in this respect between the catholics and protestants was only in degree, and in degree there was much less difference than we are apt to believe. Persecution is the deadly original sin of the reformed churches; that which cools every honest man's zeal for their cause, in proportion as his reading becomes more extensive. The Lutheran princes and cities in Germany constantly refused to tolerate the use of the mass, as an

[1] 37 H. 8. c. 2. 1 Edw. 6. c. 14. Strype, ii. 63. Burnet, etc. Cranmer, as well as the catholic bishops, protested against this act, well knowing how little regard would be paid to its intention. In the latter part of the young king's reign, as he became more capable of exerting his own power, he endowed, as is well known, several excellent foundations.

[2] Strype, Burnet, Collier, passim. Harmer's Specimens, 100. Sir Philip Hobby, our minister in Germany, writes to the protector, in 1548, that the foreign protestants thought our bishops too rich, and advises him to reduce them to a competent living: he particularly recommends his taking away all the prebends in England. Strype. 88. These counsels, and the acts which they prompted, disgust us, from the spirit of rapacity they breathe. Yet it might be urged with some force, that the enormous wealth of the superior ecclesiastics had been the main cause of those corruptions which it was sought to cast away, and that most of the dignitaries were very averse to the new religion. Even Cranmer had written some years before to Cromwell, deprecating the establishment of any prebends out of the conventual estates, and speaking of the collegiate clergy as an idle, ignorant, and gormandising race, who might without any harm be extinguished along with the regulars. Burnet, iii. 141. But the gross selfishness of the great men in Edward's reign justly made him anxious to save what he could for the church that seemed on the brink of absolute ruin. Collier mentions a characteristic circumstance. So great a quantity of church plate had been stolen, that a commission was appointed to inquire into the facts, and compel its restitution. Instead of this, the commissioners found more left than they thought sufficient, and seized the greater part to the king's use.

idolatrous service;[1] and this name of idolatry, though adopted in retaliation for that of heresy, answered the same end as the other, of exciting animosity and uncharitableness. The Roman worship was equally proscribed in England. Many persons were sent to prison for hearing mass, and similar offences.[2] The princess Mary supplicated in vain to have the exercise of her own religion at home; and Charles V. several times interceded in her behalf; but though Cranmer and Ridley, as well as the council, would have consented to this indulgence, the young king, whose education had unhappily infused a good deal of bigotry into his mind, could not be prevailed upon to connive at such idolatry.[3] Yet in one memorable instance he had shown a milder spirit, struggling against Cranmer to save a fanatical woman from the punishment of heresy. This is a stain upon Cranmer's memory which nothing but his own death could have lightened. In men hardly escaped from a similar peril, in men who had nothing to plead but the right of private judgment, in men who had defied the prescriptive authority of past ages and of established power, the crime of persecution assumes a far deeper hue, and is capable of far less extenuation, than in a Roman inquisitor. Thus the death of Servetus has weighed down the name and memory of Calvin. And though Cranmer was incapable of the rancorous malignity of the Genevan lawgiver, yet I regret to say, that there is a peculiar circumstance of aggravation in his pursuing to death this woman, Joan Boucher, and a Dutchman that had been convicted of Arianism. It is said that he had been accessory in the preceding reign to the condemnation of Lambert, and perhaps some others, for opinions concerning the Lord's Supper which he had himself afterwards embraced.[4] Such an evidence of the fallibility of human judgment, such an example that persecutions for heresy, how conscientiously soever managed, are liable to end in shedding the blood of those who maintain truth, should have taught him above all men a scrupulous repugnance to carry into effect those sanguinary laws. Compared with these executions for heresy, the imprisonment and deprivation of Gardiner and Bonner appear but measures of ordinary severity towards political adversaries under the pretext of religion; yet are they wholly unjustifiable, particularly in the former instance; and if the subsequent retaliation of those bad

[1] They declared, in the famous protestation of Spire, which gave them the name of Protestants, that their preachers having confuted the mass by passages in Scripture, they could not permit their subjects to go thither; since it would afford a bad example, to suffer two sorts of service, directly opposite to each other, in their churches. Schmidt, Histoire des Allemands, vi. 394. vii. 24.

[2] Stat. 2 & 3 Edw. 6. c. 1. Strype's Cranmer, p. 233.

[3] Burnet, 192. Somerset had always allowed her to exercise her religion, though censured for this by Warwick, who died himself a papist, but had pretended to fall in with the young king's prejudices. Her ill treatment was subsequent to the protector's overthrow. It is to be observed, that, in her father's life, she had acknowledged his supremacy, and the justice of her mother's divorce. 1 Strype, 285. 2 Burnet, 241. Lingard, vi. 326. It was of course by intimidation; but that excuse might be made for others. Cranmer is said to have persuaded Henry not to put her to death, which we must in charity hope she did not know.

[4] When Joan Boucher was condemned, she said to her judges, "It was not long ago since you burned Anne Askew for a piece of bread, and yet came yourselves soon after to believe and profess the same doctrine for which you burned her; and now you will needs burn me for a piece of flesh, and in the end you will come to believe this also when you have read the Scriptures and understand them." Strype ii. 214.

men was beyond all proportion excessive, we should remember that such is the natural consequence of tyrannical aggressions.[1]

The person most conspicuous, though Ridley was perhaps the most learned divine, in moulding the faith and discipline of the English church, which has not been very materially altered since his time, was archbishop Cranmer.[2] Few men, about whose conduct there is so little room for controversy upon facts, have been represented in more opposite lights. We know the favouring colours of protestant writers; but turn to the bitter invective of Bossuet; and the patriarch of our reformed church stands forth as the most abandoned of time-serving hypocrites. No political factions affect the impartiality of men's judgment so grossly, or so permanently, as religious heats. Doubtless if we should reverse the picture, and imagine the end and scope of Cranmer's labour to have been the establishment of the Roman Catholic religion in a protestant country, the estimate formed of his behaviour would be somewhat less favourable than it is at present. If, casting away all prejudice on either side, we weigh the character of this prelate in an equal balance, he will appear far indeed removed from the turpitude imputed to him by his enemies, yet not entitled to any extraordinary veneration. Though it is most eminently true of Cranmer, that his faults were always the effect of circumstances, and not of intention; yet this palliating consideration is rather weakened when we recollect that he voluntarily placed himself in a station where those circumstances occurred. At the time of Cranmer's elevation to the see of Canterbury, Henry, though on the point of separating for ever

[1] Gardiner had some virtues, and entertained sounder notions of the civil constitution of England than his adversaries. In a letter to Sir John Godsalve, giving his reasons for refusing compliance with the injunctions issued by the council to the ecclesiastical visiters, which, Burnet says, does him more honour than anything else in his life, he dwells on the king's wanting power to command anything contrary to common law, or to a statute, and brings authorities for this. Burnet ii. Append. 112. See also Lingard, vi. 387, for another instance. Nor was this regard to the constitution displayed only when out of the sunshine. For in the next reign he was against despotic counsels, of which an instance has been given in the last chapter. His conduct, indeed, with respect to the Spanish connection, is equivocal. He was much against the marriage at first, and took credit to himself for the securities exacted in the treaty with Philip, and established by statute. Burnet, ii. 267. But afterwards, if we may trust Noailles, he fell in with the Spanish party in the council, and even suggested to parliament that the queen should have the same power as her father to dispose of the succession by will. Ambassades de Noailles, iii. 153, &c., &c. Yet, according to Dr. Lingard, on the imperial ambassador's authority, he saved Elizabeth's life against all the council. The article GARDINER, in the Biographia Britanica, contains an elaborate and partial apology, at great length; and the historian just quoted has of course said all he could in favour of one who laboured so strenuously for the extirpation of the northern heresy. But he was certainly not an honest man, and had been active in Henry's reign against his real opinions.

Even if the ill treatment of Gardiner and Bonner by Edward's council could be executed, and the latter by his rudeness might deserve some punishment, what can be said for the imprisonment of the bishops Heath and Day, worthy and moderate men, who had gone a great way with the Reformation, but objected to the removal of altars, an innovation by no means necessary, and which should have been deferred till the people had grown ripe for further change? Mr. Southey says, "Gardiner and Bonner were deprived of their sees and imprisoned: but *no rigour was used towards them.*" Book of the Church, ii. 111. Liberty and property being trifles!

[2] The doctrines of the English church were set forth in 42 articles, drawn up, as is generally believed, by Cranmer and Ridley, with the advice of Bucer and Martyr, and perhaps of Cox. The three last of these, condemning some novel opinions, were not renewed under Elizabeth, and a few other variations were made; but upon the whole there is little difference, and none perhaps in those tenets which have been most the object of discussion. See the original Articles in Burnet, ii. App. N. 55. They were never confirmed by a convocation or a parliament, but imposed by the king's supremacy on all the clergy and on the universities. His death, however, ensued before they could be actually subscribed.

from Rome, had not absolutely determined upon so strong a measure; and his policy required that the new archbishop should solicit the usual bulls from the pope, and take the oath of canonical obedience to him. Cranmer, already a rebel from that dominion in his heart, had recourse to the disingenuous shift of a protest, before his consecration, that "he did not intend to restrain himself thereby from any thing to which he was bound by his duty to God or the king, or from taking part in any reformation of the English church which he might judge to be required."[1] This first deviation from integrity, as is almost always the case, drew after it many others; and began that discreditable course of temporising, and of undue compliance, to which he was reduced for the rest of Henry's reign. Cranmer's abilities were not perhaps of a high order, or at least they were unsuited to public affairs; but his principal defect was in that firmness by which men of more ordinary talents may insure respect. Nothing could be weaker than his conduct in the usurpation of Lady Jane, which he might better have boldly sustained, like Ridley, as a step necessary for the conservation of protestantism, than given in to against his conscience, overpowered by the importunities of a misguided boy. Had the malignity of his enemies been directed rather against his reputation than his life, had the reluctant apostate been permitted to survive his shame, as a prisoner in the Tower, it must have seemed a more arduous task to defend the memory of Cranmer; but his fame has brightened in the fire that consumed him.[2]

Those who, with the habits of thinking that prevail in our times, cast back their eyes on the reign of Edward VI., will generally be disposed to censure the precipitancy, and still more the exclusive spirit, of our principal reformers. But, relatively to the course that things have taken in Germany, and to the feverish zeal of that age, the moderation of Cranmer and Ridley, the only ecclesiastics who took a prominent share in these measures, was very conspicuous: and tended above every thing to place the Anglican church in that middle position which it has always preserved, between the Roman hierarchy and that of other protestant denominations. It is manifest, from the history of the Reformation in Germany, that its predisposing cause was the covetous and arrogant character of the superior ecclesiastics, founded upon vast temporal authority; a yoke long borne with impatience, and

[1] Strype's Cranmer, App. p. 9.—I am sorry to find a respectable writer inclining to vindicate Cranmer in this protestation, which Burnet admits to agree better with the maxims of the casuist, than with the prelate's sincerity: Todd's Introduction to Cranmer's Defence of the True Doctrine of the Sacrament (1825), p. 40. It is of no importance to inquire, whether the protest were made publicly or privately. Nothing can possibly turn upon this. The question is, whether having obtained the bulls from Rome on an express stipulation that he should take a certain oath, he had a right to offer a limitation, not explanatory, but utterly inconsistent with it? We are sure that Cranmer's views and intentions, which he very soon carried into effect, were irreconcilable with any sort of obedience to the pope; and if, under all the circumstances, his conduct was justifiable, there would be an end of all promissory obligations whatever.

[2] The character of Cranmer is summed up in no unfair manner by Mr. C. Butler, Memoirs of English Catholics, vol. i. p. 139.; except that his obtaining from Anne Boleyn an acknowledgment of her supposed pre-contract of marriage, having proceeded from motives of humanity, ought not to incur much censure, though the sentence of nullity was a mere mockery of law.—Poor Cranmer was compelled to subscribe not less than six recantations. Strype (iii. 232.) had the integrity to publish all these which were not fully known before.

which the unanimous adherence of the prelates to Rome in the period of separation gave the Lutheran princes a good excuse for entirely throwing off. Some of the more temperate reformers as Melancthon, would have admitted a limited jurisdiction of the episcopacy; but in general the destruction of that order, such as it then existed, may be deemed as fundamental a principle of the new discipline, as any theological point could be of the new doctrine. But, besides that the subjection of ecclesiastical to civil tribunals, and possibly other causes, had rendered the superior clergy in England less obnoxious than in Germany, there was this important difference between the two countries, that several bishops from zealous conviction, many more from pliability to self-interest, had gone along with the new-modelling of the English church by Henry and Edward; so that it was perfectly easy to keep up that form of government, in the regular succession which had usually been deemed essential; though the foreign reformers had neither the wish, nor possibly the means, to preserve it. Cranmer himself, indeed, during the reign of Henry, had bent, as usual, to the king's despotic humour; and favoured a novel theory of ecclesiastical authority, which resolved all its spiritual as well as temporal powers into the royal supremacy. Accordingly, at the accession of Edward, he himself, and several other bishops, took out commissions to hold their sees during pleasure. (Burnet, ii. 6.) But when the necessity of compliance had passed by, they showed a disposition not only to oppose the continual spoliations of church property, but to maintain the jurisdiction which the canon law had conferred upon them.[1] And though, as this papal code did not appear very well adapted to a protestant church, a new scheme of ecclesiastical laws was drawn up, which the king's death rendered abortive, this was rather calculated to strengthen the hands of the spiritual courts than to withdraw any matter from their cognisance.[2]

[1] There are two curious entries in the Lords' Journ. 14th and 18th of Nov. 1549, which point out the origin of the new code of ecclesiastical law mentioned in the next note: "Hodie questi sunt episcopi, contemni se a plebe, audere autem nihil pro potestate suâ administrare, eo quod per publicas quasdam denuntiationes quas proclamationes vocant, sublata esset penitus sua jurisdictio, adeo ut neminem judicio sistere nullum scelus punire, neminem ad ædem sacram cogere, neque cætera id genus munia ad eos pertinentia exequi auderent. Hæc querela ab omnibus proceribus non sine mœrore audita est; et ut quam citissimè huic malo subveniretur, injunctum est episcopis ut formulam aliquam statuti hâc de re scriptam traderent: quæ si consilio postea prælecta omnibus sententiis sanciri posset."

"18 Nov. Hodie lecta est billa pro jurisdictione episcoporum et aliorum ecclesiasticorum, quæ cum proceribus, *eo quod episcopi nimis sibi arrogare viderentur*, non placeret, visum est deligere prudentes aliquot viros utriusque ordinis, qui habitâ maturâ tantæ rei inter se deliberatione, referrent toti consilio quid pro ratione temporis et rei necessitate in hac causa agi expediret." Accordingly, the lords appoint the archbishop of Canterbury, the bishops of Ely, Durham, and Litchfield, lords Dorset, Wharton, and Stafford, with the chief justice Montague.

[2] It had been enacted, 3 E. 6. c. 11., that thirty-two commissioners, half clergy, half lay, should be appointed to draw up a collection of new canons. But these, according to Strype, ii. 303., though I do not find it in the act, might be reduced to eight, without preserving the equality of orders; and of those nominated in Nov. 1551, five were ecclesiastics, three laymen. The influence of the former shows itself in the collection, published with the title of Reformatio Legum Ecclesiasticum, and intended as a complete code of protestant canon law. This was referred for revisal to a new commission; but the king's death ensued, and the business was never again taken up. Burnet ii. 197. Collier, 326. The Latin style is highly praised; Cheke and Haddon, the most elegant scholars of that age, having been concerned in it. This however is of small importance. The canons are founded on a principle current among the clergy, that a rigorous discipline, enforced by church censures and the aid of the civil power, is the best safeguard of a christian commonwealth against vice. But it is easy to perceive that its severity would never have been endured in this country, and that this was the true reason why

The policy, or it may be the prejudices, of Cranmer induced him also to retain in the church a few ceremonial usages, which the Helvetic, though not the Lutheran, reformers had swept away; such as the copes and rochets of bishops, and the surplice of officiating priests. It should seem inconceivable that any one could object to these vestments, considered in themselves; far more, if they could answer in the slightest degree the end of conciliating a reluctant people. But this motive, unfortunately was often disregarded in that age; and indeed in all ages an abhorrence of concession and compromise is a never-failing characteristic of religious factions. The foreign reformers then in England, two of whom, Bucer and Peter Martyr, enjoyed a deserved reputation, expressed their dissatisfaction at seeing these habits retained, and complained, in general, of the backwardness of the English reformation. Calvin and Bullinger wrote from Switzerland in the same strain.[1] Nor was this sentiment by any means confined

It was laid aside; not, according to the improbable refinement with which Warburton has furnished Hurd, because the old canon law was thought more favourable to the prerogative of the crown. Compare Warburton's Letters to Hurd, p. 192., with the latter's Moral and Political Dialogues, p. 308. 4th edit.

The canons trench in several places on the known province of the common law, by assigning specific penalties and forfeitures to offences, as in the case of adultery; and though it is true that this was all subject to the confirmation of parliament, yet the lawyers would look with their usual jealousy on such provisions in ecclesiastical canons. But the great sin of this protestant legislation is its extension of the name and penalties of heresy to the wilful denial of any part of the authorised articles of faith. This is clear from the first and second titles. But it has been doubted whether capital punishments for this offence were intended to be preserved. Burnet, always favourable to the reformers, asserts that they were laid aside. Collier and Lingard, whose bias is the other way, maintain the contrary. There is, it appears to me, some difficulty in determining this. That all persons denying any one of the articles might be turned over to the secular power is evident. Yet it rather seems, by one passage in the title, de judiciis contra hæreses, c. 10., that infamy and civil disability were the only punishments intended to be kept up, except in case of the denial of the christian religion. For if a heretic were, as a matter of course, to be burned, it seems needless to provide, as in this chapter, that he should be incapable of being a witness, or of making a will. Dr. Lingard, on the other hand, says, "It regulates the delivery of the obstinate heretic to the civil magistrate, that he may *suffer death* according to law." The words to which he refers are these: Cum sic penitus insederit error, et tam alte radices egerit, ut nec sententiâ quidem excommunicationis ad veritatem reus inflecti possit, tam consumptis omnibus aliis remediis, ad extremum ad civiles magistratus ablegetur *puniendus*. Id. tit. c. 4.

It is generally best, where the words are at all ambiguous, to give the reader the power of judging for himself. But I by no means pretend that Dr. Lingard is mistaken. On the contrary, the language of this passage leads to a strong suspicion that the rigour of popish persecution was intended to remain, especially as the writ de hæretico comburendo was in force by law, and there is no hint of taking it away. Yet it seems monstrous to conceive, that the denial of predestination, (which by the way is asserted in this collection, tit. de hæresibus, c. 22., with a shade more of Calvinism than in the articles), was to subject any one to be burned alive. And on the other hand, there is this difficulty, that Arianism, Pelagianism, popery, anabaptism, are all put on the same footing; so that, if we deny that the papist or free-willer was to be burned, we must deny the same of the anti-trinitarian, which contradicts the principle and practice of that age. Upon the whole, I cannot form a decided opinion as to this matter. Dr. Lingard does not hesitate to say, "Cranmer and his associates perished in the flames which they had prepared to kindle for the destruction of their opponents."

Before I quit these canons, one mistake of Dr. Lingard's may be corrected. He says that divorces were allowed by them not only for adultery, but cruelty, desertion, and *incompatibility of temper*. But the contrary may be clearly shown, from tit. de matrimonio, c. 11., and tit. de divortiis, c. 12. Divorce was allowed for something more than incompatibility of temper; namely, *capitales inimicitiæ*, meaning, as I conceive, attempts by one party on the other's life. In this respect, their scheme of a very important branch of social law seems far better than our own. Nothing can be more absurd than our modern *privilegia*, our acts of parliament to break the bond between an adulteress and her husband. Nor do I see how we can justify the denial of redress to women in every case of adultery and desertion. It does not follow that the marriage tie ought to be dissolved as easily as it is, at least by the rich, in the Lutheran states of Germany.

[1] Strype, passim. Burnet, ii. 154.: iii. Append. 200. Collier, 294. 303.

to strangers. Hooper, an eminent divine, having been elected bishop of Gloucester, refused to be consecrated in the usual dress. It marks, almost ludicrously, the spirit of those times, that, instead of permitting him to decline the station, the council sent him to prison for some time, until, by some mutual concessions the business was adjusted.[1] These events it would hardly be worth while to notice in such a work as the present, if they had not been the prologue to a long and serious drama.

It is certain that the re-establishment of popery on Mary's accession must have been acceptable to a large part, or perhaps to the majority, of the nation. There is reason however to believe, that the reformed doctrine had made a real progress in the few years of her brother's reign. The counties of Norfolk and Suffolk, which placed Mary on the throne as the lawful heir, were chiefly protestant, and experienced from her the usual gratitude and good faith of a bigot.[2] Noailles bears witness, in many of his despatches, to the unwillingness which great numbers of the people displayed to endure the restoration of popery, and to the queen's excessive unpopularity, even before her marriage with Philip had been resolved upon.[3] As for the higher classes, they partook far less than their inferiors in the religious zeal of that age. Henry, Edward, Mary, Elizabeth, found almost an equal compliance with their varying schemes of faith. Yet the larger proportion of the nobility and gentry appear to have preferred the catholic religion. Several peers opposed the bills for reformation under Edward; and others, who had gone along with the current, became active counsellors of Mary. Not a few persons of family emigrated in the latter reign; but, with the exception of the second Earl of Bedford, who suffered a short imprisonment on account of religion, the protestant martyrology contains no confessor of superior rank.[4] The same accommodating spirit characterised, upon the whole, the clergy; and would have been far more general, if a considerable number had not availed themselves of the permission to marry granted by Edward; which led to their expulsion from their cures on his sister's coming to the throne.[5] Yet it was not the temper of Mary's parliaments, what-

[1] Strype, Burnet. The former is the more accurate.

[2] Burnet, 237. 246. 3 Strype, 10. 341. No part of England suffered so much in the persecution.

[3] Ambassades de Noailles, v. ii. passim. 3 Strype, 100.

[4] Strype, iii. 107. He reckons the emigrants at 800. Life of Cranmer, 314. Of these the most illustrious was the duchess of Suffolk, first cousin of the queen. In the parliament of 1555, a bill sequestering the property of "the duchess of Suffolk and others, contemptuously gone over the seas," was rejected by the commons on the third reading. Journals, 6th Dec.

It must not be understood, that all the aristocracy were supple hypocrites, though they did not expose themselves voluntarily to persecution. Noailles tells us, that the earls of Oxford and Westmoreland, and lord Willoughby, were censured by the council *for religion*; and it was thought that the former would lose his title, (more probably his hereditary office of chamberlain), which would be conferred on the earl of Pembroke, v. 319. Michele, the Venetian ambassador, in his Relazione del Stato d'Inghilterra, Lansdowne MSS. 840., does not speak favourably of the general affection towards popery. "The English in general," he says, "would turn Jews or Turks if their sovereign pleased; but the restoration of the abbey lands by the crown keeps alive a constant fear among those who possess them." Fol. 176. This restitution of church lands in the hands of the crown cost the queen 60,000*l.* a year of revenue.

[5] Parker had extravagantly reckoned the number of these at 12,000, which Burnet reduces to 3000, vol. iii. 226 But upon this computation they formed a very considerable body on the protestant side. Burnet's calculation, however, is made by assuming the ejected ministers of

ever pains had been taken about their election, to second her bigotry in surrendering the temporal fruits of their recent schism. The bill for restoring first fruits and impropriations in the queen's hands to the church passed not without difficulty; and it was found impossible to obtain a repeal of the act of supremacy without the pope's explicit confirmation of the abbey lands to their new proprietors. Even this confirmation, though made through the legate cardinal Pole, by virtue of a full commission, left not unreasonably an apprehension, that, on some better opportunity, the imprescriptible nature of church property might be urged against the possessors.[1] With these selfish considerations others of a more generous nature conspired to render the old religion more obnoxious than it had been at the queen's accession. Her marriage with Philip, his encroaching disposition, the arbitrary turn of his counsels, the insolence imputed to the Spaniards who accompanied him, the unfortunate loss of Calais through that alliance, while it thoroughly alienated the kingdom from Mary, created a prejudice against the religion which the Spanish court so steadily favoured.[2] So violent indeed was the hatred conceived by the English nation against Spain during the short period of Philip's marriage with their queen, that it diverted the old channel of public feelings, and almost put an end to that dislike and jealousy of France which had so long existed. For at least a century after this time we rarely find in popular writers any expression of hostility towards that country: though their national manners, so remote from our own, are not unfrequently the object of ridicule. The prejudices of the populace, as much as the policy of our counsellors, were more directed against Spain.

But what had the greatest efficacy in disgusting the English with Mary's system of faith, was the cruelty by which it was accompanied. Though the privy council were in fact continually urging the bishops forward in this persecution,[3] the latter bore the chief blame, and the

the diocese of Norwich to have been in the ratio of the whole; which from the eminent protestantism of that district, is not probable; and Dr. Lingard, on Wharton's authority, who has taken his ratio from the diocese of Canterbury, thinks they did not amount to more than about 1500.

[1] Burnet, ii. 298.; iii. 245. But see Philips's Life of Pole, sect. ix., *contra;* and Ridley's answer to this, p. 272. In fact, no scheme of religion would on the whole have been so acceptable to the nation, as that which Henry left established, chiefly what was called catholic in doctrine, but free from the grosser abuses, and from all connection with the see of Rome. Arbitrary and capricious as that king was, he carried the people along with him, as I believe, in all great points, both as to what he renounced, and what he retained. Michele (Relazione, &c.) is of this opinion.

[2] No one of our historians has been so severe on Mary's reign, except on a religious account, as Carte, on the authority of the letters of Noailles. Dr. Lingard, though with these before him, has softened and suppressed, till his queen appears honest and even amiable. A man of sense should be ashamed of such partiality to his sect. Admitting that the French ambassador had a temptation to exaggerate the faults of a government wholly devoted to Spain, it is manifest, that Mary's reign was inglorious, her capacity narrow, and her temper sanguinary; that, although conscientious in some respects, she was as capable of dissimulation as her sister, and of breach of faith as her husband; that she obstinately and wilfully sacrificed her subjects' affections and interests to a misplaced and discreditable attachment; and that the words with which Carte has concluded the character of this unlamented sovereign, though wormwood to men of Dr. Lingard's profession, are perfectly just:—"Having reduced the nation to the brink of ruin, she left it, by her seasonable decease, to be restored by her admirable successor to its ancient prosperity and glory." I fully admit, at the same time, that Dr. Lingard has proved Elizabeth to have been as dangerous a prisoner, as she afterwards found the queen of Scots.

[3] Strype ii. 17. Burnet, iii. 263. and App. 285., where there is a letter from the king and queen to Bonner, as if he wanted excitement to prosecute heretics. The number who suffered death by fire in this reign is reckoned by Fox at 284, by Speed at 277, and by lord Burghley

abhorrence entertained for them naturally extended to the doctrine they professed. A sort of instinctive reasoning told the people, what the learned on neither side had been able to discover, that the truth of a religion begins to be very suspicious, when it stands in need of prisons and scaffolds to eke out its evidences. And as the English were constitutionally humane, and not hardened by continually witnessing the infliction of barbarous punishments, there arose a sympathy for men suffering torment with such meekness and patience, which the populace of some other nations were perhaps less apt to display, especially in executions on the score of heresy.[1] The theologian indeed and the philosopher may concur in deriding the notion that either sincerity or moral rectitude can be the test of truth; yet among the various species of authority to which recourse had been had to supersede or to supply the deficiencies of argument, I know not whether any be more reasonable, and none certainly is so congenial to unsophisticated minds. Many are said to have become protestants under Mary, who at her coming to the throne, had retained the contrary persuasion. (Strype, iii. 285.) And the strongest proof of this may be drawn from the acquiescence of the great body of the kingdom in the re-establishment of protestantism by Elizabeth, when compared with the seditions and discontent on that account under Edward. The course which this famous princess steered in ecclesiastical concerns, during her long reign, will form the subject of the two ensuing chapters.

CHAPTER III.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING THE ROMAN CATHOLICS.

Change of Religion on the Queen's Accession—Acts of Supremacy and Uniformity—Restraint of Roman Catholic Worship in the first Years

at 290. Strype, iii. 473. These numbers come so near to each other, that they may be presumed also to approach the truth. But Carte, on the authority of one of Noaille's letters, thinks many more were put to death than our martyrologists have discovered. And the preface to Ridley's Treatise de Cœnâ Domini, supposed to be bishop Grindal, says that 800 suffered in this manner for religion. Burnet, ii. 364. I incline, however, to the smaller statements.

[1] Burnet makes a very just observation on the cruelties of this period, that "they raised that horror in the whole nation, that there seems ever since that time such an abhorrence to that religion to be derived down from father to son, that it is no wonder an aversion so deeply rooted and raised upon such grounds, does upon every new provocation or jealousie of returning to it break out in most violent and conclusive symptoms." p. 338. "Delicta majorum immeritus luis, *Romane*." But those who would diminish this aversion and prevent these convulsive symptoms, will do better by avoiding for the future either such panegyrics on Mary and her advisers, or such insidious extenuations of her persecution, as we have lately read, and which do not raise a favourable impression of their sincerity in the principles of toleration to which they profess to have been converted.

Noailles, who, though an enemy to Mary's government, must, as a catholic, be reckoned an unsuspicious witness, remarkably confirms the account given by Fox, and since by all our writers, of the death of Rogers, the proto-martyr, and its effects on the people. "Ce jour d'huy a esté faite la confirmation de l'alliance entre le pape et ce royaume par un sacrifice publique et solemnel d'un docteur predicant nommé Rogerus, lequel a eté brulé tout vif pour estre Lutherien; mais il est mort persistant en son opinion. A quoy le plus grand partie de ce peuple a pais tel plaisir, qu'ils n'ont eu crainte de luy faire plusieurs acclamations pour comforter son courage; et meme ses enfans y on assisté, le consolant de telle façon qu'il semblait qu'on le menait aux noces." V. 173.

of Elizabeth—Statute of 1562*—Speech of Lord Montague against it —This Act not fully enforced—Application of the Emperor in behalf of the English Catholics—Persecution of this Body in the ensuing Period—Uncertain Succession of the Crown between the Families of Scotland and Suffolk—The Queen's unwillingness to decide this, or to marry—Imprisonment of Lady Catherine Grey—Mary Queen of Scotland—Combination in her Favour—Bull of Pius V.—Statutes for the Queen's Security—Catholics more rigorously treated—Refugees in the Netherlands—Their Hostility to the Government—Fresh Laws against the Catholic Worship—Execution of Campian and others—Defence of the Queen by Burleigh—Increased Severity of the Government—Mary—Plot in her Favour—Her Execution—Remarks upon it—Continued Persecution of Roman Catholics—General Observations.*—pp. 89–130.

THE accession of Elizabeth, gratifying to the whole nation on account of the late queen's extreme unpopularity, infused peculiar joy into the hearts of all well-wishers to the Reformation. Child of that famous marriage which had severed the connexion of England with the Roman see, and trained betimes in the learned and reasoning discipline of protestant theology, suspected and oppressed for that very reason by a sister's jealousy, and scarcely preserved from the death which at one time threatened her, there was every ground to confide that notwithstanding her forced compliance with the catholic rites, during the late reign, her inclinations had continued steadfast to the opposite side.[1] Nor was she long in manifesting this disposition sufficiently to alarm one party, though not entirely to satisfy the other. Her great prudence, and that of her advisers, which taught her to move slowly, while the temper of the nation was still uncertain, and her government still embarrased with a French war and a Spanish alliance, joined with a certain tendency in her religious sentiments not

[1] Elizabeth was much suspected of a concern in the conspiracy of 1554, which was more extensive than appeared from Wyatt's insurrection, and had in view the placing her on the throne, with the earl of Devonshire for her husband. Wyatt indeed at his execution acquitted her; but as he said as much for Devonshire, who is proved by the letters of Noailles to have been engaged, his testimony is of less value. Nothing however appears in these letters, I believe, to criminate Elizabeth. Her life was saved, against the advice of the imperial court, and of their party in the cabinet, especially lord Paget, by Gardiner, according to Dr. Lingard, writing on the authority of Renard's despatches. Burnet, who had no access to that source of information, imagines Gardiner to have been her most inveterate enemy. She was even released from prison for the time, though soon afterwards detained again, and kept in custody, as is well known, for the rest of this reign. Her inimitable dissimulation was all required to save her from the penalties of heresy and treason. It appears by the memoir of the Venetian ambassador, in 1557 (Lansdowne MSS. 840), as well as from the letters of Noailles, that Mary was desirous to change the succession, and would have done so, had it not been for Philip's reluctance, and the impracticability of obtaining the consent of parliament. Though of a dissembling character, she could not conceal the hatred she bore to one who brought back the memory of her mother's and her own wrongs; especially when she saw all eyes turned towards the successor, and felt that the curse of her own barrenness was to fall on her beloved religion. Elizabeth had been not only forced to have a chapel in her house, and to give all exterior signs of conformity, but to protest on oath her attachment to the catholic faith; though Hume, who always loves a popular story, gives credence to the well known verses ascribed to her, in order to elude a declaration of her opinion on the sacrament. The inquisitors were not so easily turned round. Yet Elizabeth's faith was constantly suspected. "Accresce oltro questo l'odio," says the Venetian, "il sapere che sia aliena dalla religione presente, per essere non pur nata, ma dotta ed allevata nell' altra, che se bene con la esteriore ha mostrato, e mostra di essersi ridotta, vivendo cattolicamente, pure è opinione che dissimuli e nell' interiore la ritenga più che mai."

so thoroughly protestant as had been expected, produced some complaints of delay from the ardent reformers just returned from exile. She directed sir Edward Karn, her sister's ambassador to Rome, to notify her accession to Paul IV. Several catholic writers have laid stress on this circumstance as indicative of a desire to remain in his communion; and attributed her separation from it to his arrogant reply, commanding her to lay down the title of royalty, and submit her pretensions to his decision. But she had begun to make alterations, though not very essential, in the church service, before the pope's behaviour could have become known to her; and the bishops must have been well aware of the course she designed to pursue, when they adopted the violent and impolitic resolution of refusing to officiate at her coronation.[1] Her council was formed of a very few catholics, of several pliant conformists with all changes, and of some known friends to the protestant interest. But two of these, Cecil and Bacon, were so much higher in her confidence, and so incomparably superior in talents to the other counsellors, that it was evident which way she must incline.[2] The parliament met about two months after her accession. The creed of parliament from the time of Henry VIII. had been always that of the court; whether it were that elections had constantly been influenced, as we know was sometimes the case, or that men of adverse principles, yielding to the torrent, had left the way clear to the partisans of power. This first, like all subsequent parliaments, was to the full as favourable to protestantism as the queen could desire: the first fruits of benefices, and, what was far more important, the supremacy in ecclesiastical affairs, were restored to the crown; the laws made concerning religion in Edward's time were re-enacted. These acts did not pass without considerable opposition among the lords: nine temporal peers, besides all the bishops, having protested against the bill of uniformity establishing the Anglican liturgy, though some pains had been taken to soften the passages most obnoxious to catholics.[3] But the act restoring the

[1] Elizabeth ascended the throne Nov. 17. 1558. On the 5th of Dec. Mary was buried; and on this occasion, White, bishop of Winchester, in preaching her funeral sermon, spoke with virulence against the protestant exiles, and expressed apprehension of their return. Burnet, iii. 272. Directions to read part of the service in English, and forbidding the elevation of the host, were issued prior to the proclamation of Dec. 27. against innovations without authority. The great seal was taken from archbishop Heath early in Jan., and given to sir Nicholas Bacon. Parker was pitched upon to succeed Pole at Canterbury in the preceding month. From the dates of these and other facts, it may be fairly inferred, that Elizabeth's resolution was formed independently of the pope's behaviour towards sir Edward Karn; though that might probably exasperate her against the adherents of the Roman see, and make their religion appear more inconsistent with their civil allegiance. If, indeed, the refusal of the bishops to officiate at her coronation (Jan. 14. 1558-9), were founded in any degree on Paul IV.'s denial of her title, it must have seemed in that age within a hair's breadth of high treason. But it more probably sprang from her order that the host should not be elevated, which in truth was not legally to be justified.

[2] See a paper by Cecil on the best means of reforming religion, written at this time with all his cautious wisdom in Burnet, or in Strype's Annals of the Reformation, or in the Somers Tracts.

[3] Parl. Hist. vol. i. p. 394. In the reign of Edward, a prayer had been inserted in the liturgy to deliver us "from the bishop of Rome and all his detestable enormities." This was now struck out: and, what was more acceptable to the nation, the words used in distributing the elements were so contrived, by blending the two forms successively adopted under Edward, as neither to offend the popish, or Lutheran, nor the Zuinglian communicant. A rubric directed against the doctrine of the real or corporal presence was omitted. This was replaced after the restoration. Burnet owns that the greater part of the nation still adhered to this tenet, though it was not the opinion of the rulers of the church. ii. 300. 406.

royal supremacy met with less resistance; whether it were that the system of Henry retained its hold over some minds, or that it did not encroach, like the former, on the liberty of conscience, or that men not over-scrupulous were satisfied with the interpretation which the queen caused to be put upon the oath.

Several of the bishops had submitted to the Reformation under Edward VI. But they had acted, in general, so conspicuous a part in the late restoration of popery, that even amidst so many examples of false profession, shame restrained them from a second apostasy. Their number happened not to exceed sixteen, one of whom was prevailed on to conform; while the rest, refusing the oath of supremacy, were deprived of their bishoprics by the court of ecclesiastical high commission. In the summer of 1559, the queen appointed a general ecclesiastical visitation, to compel the observance of the protestant formularies. It appears from their reports that only about one hundred dignitaries, and eighty parochial priests, resigned their benefices, or were deprived.[1] Men eminent for their zeal in the protestant cause, and most of them exiles during the persecution, occupied the vacant sees. And thus before the end of 1559, the English church, so long contended for as a prize by the two religions, was lost for ever to that of Rome.

These two statutes, commonly denominated the acts of supremacy and uniformity, form the basis of that restrictive code of laws, deemed by some one of the fundamental bulwarks, by others the reproach of our constitution, which pressed so heavily for more than two centuries upon the adherents to the Romish church. By the former all beneficed ecclesiastics, and all laymen holding office under the crown, were obliged to take the oath of supremacy, renouncing the spiritual as well as temporal jurisdiction of every foreign prince or prelate, on pain of forfeiting their office or benefice; and it was rendered highly penal, and for the third offence treasonable, to maintain such supremacy by writing or advised speaking.[2] The latter statute trenched more on the natural rights of conscience; prohibiting, under pain of forfeiting goods and chattels for the first offence, of a year's imprisonment for the second, and of imprisonment during life for the third, the use by a

[1] Burnet; Strype's Annals, 169. Pensions were reserved for those who quitted their benefices on account of religion. Burnet, ii. 398. This was a very liberal measure, and at the same time a politic check on their conduct. Lingard thinks the number must have been much greater; but the visiter's reports seem the best authority. It is however highly probable that others resigned their preferments afterwards, when the casuistry of their church grew more scrupulous. It may be added, that the visiters restored the married clergy who had been dispossessed in the preceding reign; which would of course considerably augment the number of sufferers for popery.

[2] 1 Eliz. c. 1. The oath of supremacy was expressed as follows:—"I, A. B., do utterly testify and declare, that the queen's highness is the only supreme governor of this realm, and all other her highness's dominions and countries, as well in all spiritual and ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm."

A remarkable passage in the injunctions to the ecclesiastical visiters of 1559, which may be

minister, whether beneficed or not, of any but the established liturgy; and imposed a fine of one shilling on all who should absent themselves from church on Sundays and holydays. (1 Eliz. c. 2.)

This act operated as an absolute interdiction of the catholic rites, however privately celebrated. It has frequently been asserted, that the government connived at the domestic exercise of that religion during these first years of Elizabeth's reign. This may possibly have been the case with respect to some persons of very high rank, whom it was inexpedient to irritate. But we find instances of severity towards catholics, even in that early period; and it is evident that their solemn rites were only performed by stealth, and at much hazard. Thus sir Edward Waldgrave and his lady were sent to the Tower in 1561, for hearing mass and having a priest in their house. Many others about the same time were punished for the like offence. (Strype's Ann Is, i. 233. 241.) Two bishops, one of whom, I regret to say, was Grindal, write to the council in 1562, concerning a priest apprehended in lady's house, that neither he nor the servants would be sworn to answer to articles, saying they would not accuse themselves; and, after a wise remark on this, that "papistry is like to end in anabaptistry," proceed to hint, that "some think that if this priest might be put to some kind of torment, and so driven to confess what he knoweth, he might gain the queen's majesty a good mass of money by the

reckoned in the nature of a contemporaneous exposition of the law, restrains the royal supremacy established by this act, and asserted in the above oath, in the following words: "Her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by words of the said oath it may be recollected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church; wherein her said subjects be much abused by such evil-disposed persons. For certainly her majesty neither doth, nor ever will challenge any other authority than that was challenged and lately used by the said noble kings of famous memory, king Henry VIII. and king Edward VI., which is, and was of ancient time due to the imperial crown of this realm; that is, under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person that hath conceived any other sense of the form of the said oath shall accept the same with this interpretation, sense, or meaning, her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act, against such as shall peremptorily or obstinately take the same oath." 1 Somers Tracts, edit. Scott, 73.

This interpretation was afterwards given in one of the thirty-nine articles, which having been confirmed by parliament, it is undoubtedly to be reckoned in the true sense of the oath. Mr. Butler, in his Memoirs of English Catholics, vol. i. p. 157., enters into a discussion of the question, whether Roman catholics might conscientiously take the oath of supremacy in this sense. It appears that in the seventeenth century some contended for the affirmative: and this seems to explain the fact, that several persons of that persuasion, besides peers, from whom the oath was not exacted, did actually hold offices under the Stuarts, and even enter into parliament, and that the test act and declaration against transubstantiation were thus rendered necessary to make their exclusion certain. Mr. B. decides against taking the oath, but on grounds by no means sufficient; and oddly overlooks the decisive objection, that it denies in toto the jurisdiction and ecclesiastical authority of the pope. No writer, as far as my slender knowledge extends, of the Gallican or German school of discipline, has gone to this length; certainly not Mr. Butler himself, who in a modern publication, Book of the Roman Catholic Church, p. 120., seems to consider even the appellant jurisdiction in ecclesiastical causes as vested in the holy see by divine right.

As to the exposition before given of the oath of supremacy, I conceive that it was intended not only to relieve the scruples of catholics, but of those who had imbibed from the school of Calvin an apprehension of what is sometimes, though rather improperly, called Erastianism, the merging of all spiritual powers, even those of ordination and of preaching, in the paramount authority of the state, towards which the despotism of Henry, and obsequiousness of Cranmer, had seemed to bring the church of England.

masses that he hath said; but this we refer to your lordship's wisd m."[1] This commencement of persecution induced many catholics to fly beyond sea, and gave rise to those re-unions of disaffected exiles, which never ceased to endanger the throne of Elizabeth.

It cannot, as it appears to me, be truly alleged, that any greater provocation had as yet been given by the catholics, than that of pertinaciously continuing to believe and worship as their fathers had done before them. I request those who may hesitate about this to pay some attention to the order of time before they form their opinions. The master mover, that became afterwards so busy, had not yet put his wires into action. Every prudent man at Rome, and we shall not at least deny that there were such, condemned the precipitate and insolent behaviour of Paul IV. towards Elizabeth, as they did most other parts of his administration. Pius IV., the successor of that injudicious old man, aware of the inestimable importance of reconciliation, and suspecting probably, that the queen's turn of thinking did not exclude all hope of it, despatched a nuncio to England, with an invitation to send ambassadors to the council at Trent, and with powers, as is said, to confirm the English liturgy, and to permit double communion; one of the few concessions which the more indulgent Romanists of that age were not very reluctant to make. (Strype, 220.) But Elizabeth had taken her line as to the court of Rome; the nuncio received a message at Brussels, that he must not enter the kingdom: and she was too wise to countenance the impartial fathers of Trent, whose labours had nearly drawn to a close, and whose decisions on the controverted points it had never been very difficult to foretell. I have not found that Pius IV., more moderate than most other pontiffs of the sixteenth century, took any measures hostile to the temporal government of this realm; but the deprived ecclesiastics were not unfairly anxious to keep alive the faith of their former hearers, and to prevent them from sliding into conformity, through indifference and disuse of their ancient rites.[2] The means taken were chiefly the same as had been adopted against themselves, the dispersion of small papers, either in a serious or lively strain; but the remarkable position in which the queen was placed rendering her death a most important contingency, the popish party made use of pretended conjurations and prophecies of that event, in order to unsettle the people's minds, and dispose them to anticipate another re-action.[3] Partly through these political circumstances, but far more from the hard usage they experienced for professing their religion, there seems to have been an increasing restlessness among the catholics about 1562, which was met with new rigour by the parliament of that year.[4]

[1] Haynes, 395. The penalty for causing mass to be said, by the act of uniformity, was only 100 marks for the first offence. These imprisonments were probably in many cases illegal, and only sustained by the arbitrary power of the high commission court.

[2] Questions of conscience were circulated, with answers, all tending to show the unlawfulness of conformity. Strype, 228. There was nothing more in this than the catholic clergy were bound in consistency with their principles to do, though it seemed very atrocious to bigots. Mr. Butler says, that some theologians at Trent were consulted as to the lawfulness of occasional conformity to the Anglican rites, who pronounced against it. Memoirs of Catholics, i. 171.

[3] The trick of conjuration about the queen's death began very early in her reign. (Strype, i. 7.), and led to a penal statute against "fond and fantastical prophecies." 5 Eliz. c. 15.

[4] I know not how to charge the catholics with the conspiracy of the two Poles, nephews of

The act entitled, for the assurance of the queen's royal power over all estates and subjects within her dominions, enacts, with an iniquitous and sanguinary retrospect, that all persons who had ever taken holy orders, or any degree in the universities, or had been admitted to the practice of the laws, or held any office in their execution, should be bound to take the oath of supremacy, when tendered to them by a bishop, or by commissioners appointed under the great seal. The penalty for the first refusal of this oath was that of a præmunire; but any person who after the space of three months from the first tender should again refuse it when in like manner tendered, incurred the pains of high treason. The oath of supremacy was imposed by the statute on every member of the House of Commons, but could not be tendered to a peer; the queen declaring her full confidence in those hereditary counsellors. Several peers of great weight and dignity were still catholics. (5 Eliz. c. 1.)

This harsh statute did not pass without opposition. Two speeches against it have been preserved; one by lord Montague in the House of Lords, the other by Mr. Atkinson in the Commons, breathing such generous abhorrence of persecution as some erroneously imagine to have been unknown to that age, because we rarely meet with it in theological writings. "This law," said lord Montague, "is not necessary; forasmuch as the catholics of this realm disturb not, nor hinder the publick affairs of the realms, neither spiritual nor temporal. They dispute not, they preach not, they disobey not the queen; they cause no trouble nor tumults among the people; so that no man can say that thereby the realm doth receive any hurt or damage by them. They have brought into the realm no novelties in doctrine and religion. This being true and evident, as it is indeed, there is no necessity why any new law should be made against them. And where there is no sore nor grief, medicines are superfluous, and also hurtful and dangerous." "I do entreat," he says afterwards, "whether it be just to make this penal statute to force the subjects of this realm to receive and believe the religion of protestants on pain of death. This I say to be a thing most unjust; for that it is repugnant to the natural liberty of men's understanding. For understanding may be persuaded, but not forced." And further on: "It is an easy thing to understand that a thing so unjust, and so contrary to all reason and liberty of man, cannot be put in execution but with greater incommodity and difficulty. For what man is there so without courage and stomach, or void of all honour, that can consent or agree to receive an opinion and new religion by force and compulsion; or will swear that he thinketh the contrary to what he thinketh? To be still, or dissemble, may be borne and suffered for a

the cardinal, and some others, to obtain five thousand troops from the duke of Guise, and proclaim Mary queen. This seems however to have been the immediate provocation for the statute 5 Eliz.; and it may be thought to indicate a good deal of discontent in that party upon which the conspirators relied But as Elizabeth spared the lives of all who were arraigned, and we know no details of the case, it may be doubted whether their intentions were altogether so criminal as was charged. Strype, i. 333. Camden, 388. (in Kennet).

Strype tells us (i. 374.) of resolutions adopted against the queen in a consistory held by Pius IV. in 1563; one of these is a pardon to any cook, brewer, vintner, or other, that would poison her. But this is so unlikely, and so little in that pope's character, that it makes us suspect the rest, as false information of a spy.

time—to keep his reckoning with God alone; but to be compelled to lie and to swear, or else to die therefore, are things that no man ought to suffer and endure. And it is to be feared rather than to die they will seek how to defend themselves; whereby should ensue the contrary of what every good prince and well advised commonwealth ought to seek and pretend, that is, to keep their kingdom and government in peace."[1]

I am never very willing to admit as an apology for unjust or cruel enactments, that they are not designed to be generally executed; a pretext often insidious, always insecure, and tending to mask the approaches of arbitrary government. But it is certain that Elizabeth did not wish this act to be enforced in its full severity. And archbishop Parker, by far the most prudent churchman of the time, judging some of the bishops too little moderate in their dealings with the papists, warned them privately to use great caution in tendering the oath of supremacy according to the act, and never to do so the second time, on which the penalty of treason might attach, without his previous approbation. (Strype's Life of Parker, 125.) The temper of some of his colleagues was more narrow and vindictive. Several of the deprived prelates had been detained in a sort of honourable custody in the palaces of their successors.[2] Bonner, the most justly obnoxious of them all, was confined in the Marshalsea. Upon the occasion of this new statute, Horn, bishop of Winchester, indignant at the impunity of such a man, proceeded to tender him the oath of supremacy, with an evident intention of driving him to high treason. Bonner, however, instead of evading this attack, intrepidly denied the other to be a lawful bishop; and strange as it may seem, not only escaped all further molestation, but had the pleasure of seeing his adversaries reduced to pass an act of parliament, declaring the present bishops to have been legally consecrated.[3] This statute, and especially its preamble, might lead a hasty reader to suspect that the celebrated story of an irregular consecration of the first protestant bishops at the Nag's-head tavern was not wholly undeserving of credit. That tale however has been satisfactorily refuted; the only irregularity which gave rise to this statute consisted in the use of an ordinal, which had not been legally re-established.[4]

It was not long after the act imposing such heavy penalties on

[1] Strype, Collier, Parliament. History. The original source is the manuscript collections of Fox the martyrologist, a very unsuspicious authority; so that there seems every reason to consider this speech, as well as Mr. Atkinson's, authentic. The following is a specimen of the sort of answer given to these arguments: "They say it touches conscience, and it is a thing wherein a man ought to have a scruple: but if any hath a conscience in it, these four years' space might have settled it. Also, after his first refusal, he hath three months' respite for conference and settling of his conscience." Strype, 270.

[2] Strype's Annals, 149. Tunstall was treated in a very handsome manner by Parker, whose guest he was. But Feckenham, abbot of Westminster, met with rather unkind usage, though he had been active in saving the lives of protestants under Mary, from bishops Horn and Cox, (the latter of whom seems to have been an honest, but narrow-spirited and peevish man,) and at last was sent to Wisbeach gaol for refusing the oath of supremacy. Strype, i. 457. ii. 526. Fuller's Church History, 178.

[3] Elizabeth c. 1. Eleven peers dissented, all noted catholics, except the earl of Sussex. Strype, i. 402.

[4] Even Dr. Lingard admits that Parker was consecrated at Lambeth, on Dec. 17, 1559; but conjectures that there may have been some previous meeting at the Nag's-head, which gave rise to the story. This means, that any absurdity may be presumed, rather than acknowledge good catholics to have propagated a lie.

catholic priests for refusing the oath of supremacy, that the emperor Ferdinand addressed two letters to Elizabeth, interceding for the adherents to that religion, both with respect to those new severities to which they might become liable by conscientiously declining that oath, and to the prohibition of the free exercise of their rites. He suggested that it might be reasonable to allow them the use of one church in every city. And he concluded with an expression, which might possibly be designed to intimate that his own conduct towards the protestants in his dominions would be influenced by her concurrence in his request.[1] Such considerations were not without great importance. The protestant religion was gaining ground in Austria, where a large proportion of the nobility as well as citizens had for some years earnestly claimed its public toleration. Ferdinand, prudent and averse from bigoted counsels, and for every reason solicitous to heal the wounds which religious differences had made in the empire, while he was endeavouring, not absolutely without hope of success, to obtain some concessions from the pope, had shown a disposition to grant further indulgences to his protestant subjects. His son, Maximilian, not only through his moderate temper, but some real inclination towards the new doctrines, bade fare to carry much farther the liberal policy of the reigning emperor.[2] It was consulting very little the general interests of protestantism, to disgust persons so capable and so well disposed to befriend it. But our queen, although free from the fanatical spirit of persecution which actuated part of her subjects, was too deeply imbued with arbitrary principles to endure any public deviation from the mode of worship she should prescribe. And it must perhaps be admitted, that experience alone could fully demonstrate the safety of toleration, and show the fallacy of apprehensions that unprejudiced men might have entertained. In her answer to Ferdinand, the queen declares that she cannot grant churches to those who disagree from her religion, being against the laws of her parliament, and highly dangerous to the state of her kingdom; as it would sow various opinions in the nation to distract the minds of honest men, and would cherish parties and factions, that might disturb the present tranquillity of the commonwealth. Yet enough had already occurred in France to lead observing men to suspect, that severities and restrictions are by no means an infallible specific to prevent or subdue religious factions.

Camden and many others have asserted, that by systematic connivance the Roman catholics enjoyed a pretty free use of their religion for the first fourteen years of Elizabeth's reign. But this is not reconcilable to many passages in Strype's collections. We find abundance of persons harassed for recusancy, that is, for not attending the protestant church, and driven to insincere promises of conformity. Others were dragged before ecclesiastical commissioners for harbouring priests,

[1] Nobis vero factura est rem adeo gratam, ut omnem simus daturi operam, quo possimus eam rem serenitati vestræ mutuis benevolentiæ et fraterni animi studiis cumulatissimè compensare. See the letter in the additions to the first volume of Strype's Annals, prefixed to the second, p. 67. It has been erroneously referred by Camden, whom many have followed, to the year 1559, but bears date 24th Sept., 1563.

[2] For the dispositions of Ferdinand and Maximilian towards religious toleration in Austria, which indeed for a time existed, see F. Paul, Concile de Trente (par Courayer), ii, 72. 197 220, &c. Flechier, Vie de Commendam, 388.; or Coxe's House of Austria.

or for sending money to those who had fled beyond sea. (Strype, 513, et alibi.) Students of the inns of court, where popery had a strong hold at this time, were examined in the star-chamber as to their religion, and on not giving satisfactory answers were committed to the Fleet.[1] The catholic party were not always scrupulous about the usual artifices of an oppressed people, meeting force by fraud, and concealing their heartfelt wishes under the mask of ready submission, or even of zealous attachment. A great majority both of clergy and laity yielded to the times; and of these temporising conformists it cannot be doubted, that many lost by degrees all thought of returning to their ancient fold. But others, while they complied with exterior ceremonies, retained in their private devotions their accustomed mode of worship. It is an admitted fact, that the catholics generally attended the church, till it came to be reckoned a distinctive sign of their having renounced their own religion. They persuaded themselves, and the English priests, uninstructed and accustomed to a temporising conduct, did not discourage the notion that the private observance of their own rites would excuse a formal obedience to the civil power.[2] The Romish scheme of worship, though it attaches more importance to ceremonial rites, has one remarkable difference from the protestant, that it is far less social; and consequently the prevention of its open exercise has far less tendency to weaken men's religious associations, so long as their individual intercourse with a priest, its essential requisite, can be preserved. Priests therefore travelled the country in various disguises, to keep alive a flame which the practice of outward conformity was calculated to extinguish. There was not a county throughout England, says a catholic historian, where several of Mary's clergy did not reside, and were commonly called the old priests. They served as chaplains in private families.[2] (Dodd's Church Hist. vol. ii. p. 8.) By stealth, at the dead of night, in private chambers, in the secret lurking-places of an ill-peopled country, with all the mystery that subdues the imagination, with all the

[1] Strype, 522. He says the lawyers in most eminent places were generally favourers of popery, p. 269. But if he means the judges, they did not long continue so.

[2] Cum regina Maria moreretur, et religio in Angliâ mutaret, post episcopos et prælatos catholicos captos et fugatos, populus velut ovium grex sine pastore in magnis tenebris et caligine animarum suarum oberravit. Unde etiam factum est multi ut catholicorum superstitionibus impiis dissimulationibus et gravibus juramentis contra sanctæ sedis apostolicæ auctoritatem, cum admodum parvo aut plane nullo conscientiarum suarum scrupulo assuescer nt. Frequentabant ergo hæreticorum synagogas, intererant eorum concionibus, atque ad easdem etiam audiendas filios et familiam suam compellabant. Videbatur illis ut catholici essent, sufficere una cum hæreticis eorum templa non adire, ferri autem posse si ante vel post illos eadem intrassent. Communicabatur de sacrilegâ Calvini cœnâ, vel secreto et clanculum intra privatos parietes. Missam qui audiverant, ac postea Calvinianos se habere olebant. sic se de præcepto satisfecisse existimabant. Deferebantur filii catholicorum ad baptisteria hæreticorum, ac inter illorum manus matrimonia contrahebant. Atque hæc omnia sine omni scrupulo fiebant, facta propter catholicorum sacerdotum ignorantiam, qui talia vel licere credebant, vel timore quodam præpediti dissimulabant. Nunc autem per Dei misericordiam omnes catholici intelligunt, ut salventur non satis esse corde fidem catholicam credere, sed eandem etiam ore oportere confiteri. Ribadeneira de Schismate, p. 53. See also Butler's English Catholics, vol. iii. p. 146. Some of our late defenders of the Reformation (but non tali, etc.) are seriously disposed to complain, that the English catholics were not suffered quietly to go on in their conformity, that is, to become as hearty protestants as their neighbours in the next generation. One argument of these amusing reasoners is, that the church service, though it did not contain all they believed, yet contained nothing they denied. Thus it appears, that men are to be censured for refusing to act on a principle, not only which they do not themselves acknowledge, but which their adversaries would be just as unwilling to admit in any application to their own case; for I presume Mr. ——— would not think it right to live in sole and constant communion with an unitarian congregation.

mutual trust that invigorates constancy, these prescribed ecclesiastics celebrated their solemn rites, more impressive in such concealment than if surrounded by all their former splendour. The strong predilection indeed of mankind for mystery, which has probably led many to tamper in political conspiracies without much further motive, will suffice to preserve secret associations, even where their purposes are far less interesting than those of religion. Many of these itinerant priests assumed the character of protestant preachers; and it has been said, with some truth, though not probably without exaggeration, that, under the directions of their crafty court, they fomented the divisions then springing up, and mingled with the anabaptists and other sectaries, in the hope both of exciting dislike to the establishment, and of instilling their own tenets, slightly disguised, into the minds of unwary enthusiasts.[1]

It is my thorough conviction that the persecution, for it can obtain no better name,[2] carried on against the English catholics, however it might serve to delude the government by producing an apparent conformity, could not but excite a spirit of disloyalty in many adherents of that faith. Nor would it be safe to assert that a more conciliating policy would have altogether disarmed their hostility, much less laid at rest those busy hopes of the future, which the peculiar circumstances of Elizabeth's reign had a tendency to produce. This remarkable posture of affairs affected all her civil, and still more her ecclesiastical policy. Her own title to the crown depended absolutely on a parliamentary recognition. The act of 35 H. 8. c. 1. had settled the crown upon her, and thus far restrained the previous statute, 28 H. 8. c. 7., which had empowered her father to regulate the succession at his pleasure. Besides this legislative authority, his testament had bequeathed the kingdom to Elizabeth after her sister Mary; and the common consent of the nation had ratified her possession. But the queen of Scots, niece of Henry by Margaret, his elder sister, had a prior right to the throne during Elizabeth's life, in the eyes of such

[1] Thomas Heath, brother to the late archbishop of York, was seized at Rochester about 1570, well provided with anabaptist and Arian tracts for circulation. Strype. i. 521. For other instances, see p. 281, 484. Life of Parker, 244. Nalson's Collection's, vol. i. Introduction, p. 39, &c., from a pamphlet written also by Nalson, entitled, Foxes and Firebrands. It was surmised, that one Henry Nicolas, chief of a set of fanatics, called the Family of Love, of whom we read a great deal in this reign, and who sprouted up again about the time of Cromwell, was secretly employed by the popish party. Strype, ii. 37. 589. 595. But these conjectures were very often ill-founded, and possibly so in this instance, though the passages quoted by Strype (589.) are suspicious. Brandt however (Hist. of Reformation in Low Countries, vol. i. p. 105.) does not suspect Nicolas of being other than a fanatic. His sect appeared in the Netherlands about 1555.

[2] "That church [of England] and the queen, its re-founder, are clear of persecution, as regards the catholics. No church, no sect, no individual even, had yet professed the principle of toleration." Southey's Book of the Church, vol. ii. p. 285. If the second of these sentences is intended as a proof of the first, I must say, it is little to the purpose. But it is not true, in this broad way of assertion. Not to mention sir Thomas More's Utopia, the principle of toleration had been avowed by the chancellor l'Hospital, and many others in France. I mention him as on the stronger side: for in fact the weaker had always professed the general principle, and could demand toleration from those of different sentiments on no other plea. And as to *capital* inflictions for heresy, which Mr. S. seems chiefly to have in his mind, there is reason to believe that many protestants never approved them. Sleidan intimates, vol. iii. p. 263., that Calvin incurred odium by the death of Servetus. And Melancthon says expressly the same thing, in the letter which he unfortunately wrote to the reformer of Geneva, declaring his own approbation of the crime; and which I am willing to ascribe rather to his constitutional fear of giving offence, than to sincere conviction.

catholics as preferred an hereditary to a parliamentary title, and was reckoned by the far greater part of the nation its presumptive heir after her decease. There could indeed be no question of this, had the succession been left to its natural course. But Henry had exercised the power with which his parliament, in too servile a spirit, yet in the plenitude of its sovereign authority, had invested him, by settling the succession in remainder upon the house of Suffolk, descendants of his second sister Mary, to whom he postponed the elder line of Scotland. Mary left two daughters, Frances and Eleanor. The former became wife of Grey, marquis of Dorset, created duke of Suffolk by Edward; and had three daughters, Jane, whose fate is well known, Catherine, and Mary. Eleanor Brandon, by her union with the earl of Cumberland, had a daughter, who married the earl of Derby. At the beginning of Elizabeth's reign, or rather after the death of the duchess of Suffolk, lady Catherine Grey was by statute law the presumptive heiress of the crown; but according to the rules of hereditary descent, which the bulk of mankind do not readily permit an arbitrary and capricious enactment to disturb, Mary queen of Scots, grand-daughter of Margaret, was the indisputable representative of her royal progenitors, and the next in succession to Elizabeth.

This reversion, indeed, after a youthful princess, might well appear rather an improbable contingency. It was to be expected that a fertile marriage would defeat all speculations about her inheritance; nor had Elizabeth been many weeks on the throne, before this began to occupy her subjects' minds.[1] Among several who were named, two very soon became the prominent candidates for her favour, the archduke Charles, son of the emperor Ferdinand, and lord Robert Dudley, some time after created earl of Leicester; one recommended by his dignity and alliances, the other by her own evident partiality. She gave at the outset so little encouragement to the former proposal, that Leicester's ambition did not appear extravagant. (Haynes, 233.) But her ablest counsellors, who knew his vices, and her greatest peers, who thought his nobility recent and ill acquired, deprecated so unworthy a connection.[2] Few will pretend to explore the labyrinths of Elizabeth's heart; yet we may almost conclude, that her passion for this favourite kept up a struggle against her wisdom, for the first seven or eight years of her reign. Meantime she still continued unmarried; and those expressions she had so early used, of her resolution to live and die a virgin, began to appear less like coy affectation than at first. Never had a sovereign's marriage been more desirable for a kingdom. Cecil, aware how important it was that the queen should marry, but dreading her union with Leicester, contrived, about the end of 1564, to renew the treaty with the archduke Charles.[3] During this negotiation, which lasted

[1] The address of the house of commons, begging the queen to marry, was on Feb. 6. 1559.

[2] See particularly two letters in the Hardwicke State Papers, i. 122. and 163., dated in Oct. and Nov. 1560, which show the alarm excited by the queen's ill-placed partiality.

[3] Cecil's earnestness for the Austrian marriage appears plainly in Haynes, 430.; and still more in a remarkable minute, where he has drawn up, in parallel columns, according to a rather formal but perspicuous method he much used, his reasons in favour of the archduke, and against the earl of Leicester. The former chiefly relate to foreign politics, and may be conjectured by those acquainted with history. The latter are as follows: 1. Nothing is increased by marriage of him, either in riches, estimation, or power. 2. It will be thought that the slanderous speeches of the queen with the earl have been true. 3. He shall study nothing but

from two to three years, she showed not a little of that evasive and dissembling coquetry which was to be more fully displayed on subsequent occasions.[1] Leicester deemed himself so much interested, as to quarrel with those who manifested any zeal for the Austrian marriage; but his mistress gradually overcame her misplaced inclinations; and from the time when that connexion was broken off, his prospects of becoming her husband seem rapidly to have vanished away. The pretext made for relinquishing this treaty with the archduke was Elizabeth's constant refusal to tolerate the exercise of his religion; a difficulty which, whether real or ostensible, recurred in all her subsequent negotiations of a similar nature.[2]

In every parliament of Elizabeth, the house of commons was zealously attached to the protestant interest. This, as well as an apprehension of disturbance from a contested succession, led to those importunate solicitations that she would choose a husband, which she so artfully evaded. A determination so contrary to her apparent interest, and to the earnest desire of her people, may give some countenance to the surmises of the time, that she was restrained from marriage by a secret consciousness that it was unlikely to be fruitful.[3] Whether

to enhance his own particular friends to wealth, to offices, to lands, and to offend others. 4. He is infamed by death of his wife. 5. He is far in debt. 6. He is likely to be unkind, and jealous of the queen's majesty. Id. 444. These suggestions, and especially the second, if actually laid before the queen, show the plainness and freedom which this great statesman ventured to use towards her. The allusion to the death of Leicester's wife, which had occurred in a very suspicious manner, at Cumnor, near Oxford, and is well known as the foundation of the novel of Kenilworth, though related there with great anachronism and confusion of persons, may be frequently met with in contemporary documents. By the above quoted letters in the Hardwicke Papers, it appears that those who disliked Leicester had spoken freely of this report to the queen.

[1] Elizabeth carried her dissimulation so far as to propose marriage articles, which were formally laid before the imperial ambassador. These, though copied from what had been agreed on Mary's marriage with Philip, now seemed highly ridiculous, when exacted from a younger brother without territories or revenues. Jura et leges regni conserventur, neque quicquam mutetur in religione aut in statu publico. Officia et magistratus exerceantur per naturales. Neque regina, neque liberi sui educantur ex regno sine consensu regni, &c. Haynes, 438.

Cecil was not too wise a man to give some credit to astrology. The stars were consulted about the queen's marriage; and those veracious oracles gave response, that she should be married in the thirty-first year of her age to a *forciguer*, and have one son, who would be a great prince, and a daughter, &c. &c. Strype. ii. 16., and App. 4., where the nonsense may be read at full length. Perhaps, however the wily minister was no dupe, but meant, that his mistress should be.

[2] The council appear in general to have been as resolute against tolerating the exercise of the catholic religion in any husband the queen might choose, as herself. We find however that several divines were consulted on two questions: 1. Whether it were lawful to marry a papist. 2. Whether the queen might permit mass to be said. To which answers were given, not agreeing with each other. Strype, ii. 150., and App. 31. 33. When the earl of Worcester was sent over to Paris in 1571, as proxy for the queen, who had been made sponsor for Charles IX.'s infant daughter, she would not permit him, though himself a catholic, to be present at the mass on that occasion. ii. 171.

[3] "The people," Camden says, "cured Huie, the queen's physician, as having dissuaded the queen from marrying on account of some impediment and defect in her." Many will recollect the allusion to this in Mary's scandalous letter to Elizabeth, wherein, under pretence of repeating what the countess of Shrewsbury had said, she utters every thing that female spite and ungovernable malice could dictate. But in the long and confidential correspondence of Cecil, Walsingham, and sir Thomas Smith, about the queen's marriage with the duke of Anjou, in 1571, for which they were evidently most anxious, I do not perceive the slightest intimation that the prospect of her bearing children was at all less favourable than in any other case. The council seem, indeed, in the subsequent treaty with the other duke of Anjou, in 1579, when she was forty-six, to have reckoned on something rather beyond the usual laws of nature in this respect; for in a minute by Cecil of the reasons for and against this marriage, he sets down the probability of issue on the favourable side. "By marrying with Monsieur she is likely to have children, *because of his youth*:" as if her age were no objection.

these conjectures were well founded, of which I know no evidence, or whether the risk of experiencing that ingratitude which the husbands of sovereign princesses have often displayed, and of which one glaring example was immediately before her eyes, outweighed, in her judgment, that of remaining single, or whether she might not even apprehend a more desperate combination of the catholic party at home and abroad, if the birth of any issue from her should shut out their hopes of Mary's succession, it is difficult for us to decide.

Though the queen's marriage were the primary object of these addresses, as the most probable means of securing an undisputed heir to the crown, yet she might have satisfied the parliament in some degree by limiting the succession to one certain line. But it seems doubtful whether this would have answered the proposed end. If she had taken a firm resolution against matrimony, which, unless on the supposition already hinted, could hardly be reconciled with a sincere regard for her people's welfare, it might be less dangerous to leave the course of events to regulate her inheritance. Though all parties seem to have conspired in pressing her to some decisive settlement on this subject, it would not have been easy to content the two factions, who looked for a successor to very different quarters.[1] It is evident that any confirmation of the Suffolk title would have been regarded by the queen of Scots and her numerous partisans as a flagrant injustice, to which they would not submit but by compulsion: and on the other hand by re-establishing the hereditary line, Elizabeth would have lost her check on one whom she had reason to consider as a rival and competitor, and whose influence was already alarmingly extensive among her subjects.

She had, however, in one of the first years of her reign, without any better motive than her own jealous and malignant humour, taken a step not only harsh and arbitrary, but very little consonant to policy, which had almost put it out of her power to defeat the queen of Scots' suc-

[1] Camden, after telling us that the queen's disinclination to marry raised great clamours, and that the earls of Pembroke and Leicester had professed their opinion that she ought to be obliged to take a husband, or that a successor should be declared by act of parliament even against her will, asserts some time after, as inconsistently as improperly, that "very few but malecontents and traitors appeared very solicitous in the business of a successor." P. 401, (in Kennet's Complete Hist. of England, vol. ii.) This however, from Camden's known proneness to flatter James, seems to indicate that the Suffolk party were more active than the Scots upon this occasion. Their strength lay in the house of commons, which was wholly protestant, and rather puritan.

At the end of Murden's State Papers is a short journal kept by Cecil, containing a succinct and authentic summary of events in Elizabeth's reign. I extract as a specimen such passages as bear on the present subject.

Oct. 6. 1566. Certain lewd bills thrown abroad against the queen's majesty for not assenting to have the matter of succession proved in parliament; and bills also to charge sir W. Cecil the secretary with the occasion thereof.

27. Certain lords, viz. the earls of Pembroke and Leicester, were excluded the presence-chamber for furthering the proposition of the succession to be declared by parliament without the queen's allowance.

November 12. Messrs. Bell and Monson moved trouble in the parliament about the succession.

14. The queen had before her thirty lords and thirty commoners, to receive her answer concerning their petition for the succession and for marriage. Dalton was blamed for speaking in the commons house.

24. Command given to parliament not to treat of the succession.

Nota: in this parliament time the queen's majesty did remit a part of the offer of a subsidy to the commons, who offered largely, to the end to have had the succession established. P. 762.

cession. Lady Catherine Grey, who has been already mentioned as next in remainder of the house of Suffolk, proved with child by a private marriage, as they both alleged, with the earl of Hertford. The queen, always envious of the happiness of lovers, and jealous of all who could entertain any hopes of the succession, threw them both into the Tower. By connivance of their keepers, the lady bore a second child during this imprisonment. Upon this Elizabeth caused an inquiry to be instituted before a commission of privy counsellors and civilians; wherein, the parties being unable to adduce proof of their marriage, Archbishop Parker pronounced that their cohabitation was illegal, and that they should be censured for fornication. He was to be pitied if the law obliged him to utter so harsh a sentence, or to be blamed if it did not. Even had the marriage never been solemnised, it was impossible to doubt the existence of a contract, which both were still desirous to perform. But there is reason to believe that there had been an actual marriage, though so hasty and clandestine, that they had not taken precautions to secure evidence of it. The injured lady sunk under this hardship and indignity;[1] but the legitimacy of her children was acknowledged by general consent, and, in a distant age, by a legislative declaration. These proceedings excited much dissatisfaction; generous minds revolted from their severity, and many lamented to see the reformed branch of the royal stock thus bruised by the queen's unkind and impolitic jealousy. (Haynes, 396.) Hales, clerk of the hanaper, a zealous protestant, having written in favour of lady Catherine's marriage, and of her title to the succession, was sent to the Tower.[2] The lord keeper Bacon himself, a known friend to the house of Suffolk, being suspected of having prompted Hales to write this treatise, lost much of his mistress's favour. Even Cecil, though he had taken a share in prosecuting lady Catherine, perhaps in some degree from an apprehension that the queen might remember he had once joined in proclaiming her sister Jane, did not always escape the same suspicion;[3] and it is probable that he felt the imprudence of entirely discountenancing a party from which the queen and religion had nothing to dread. There is reason to believe that the house of Suffolk was

[1] Catherine, after her release from the Tower, was placed in the custody of her uncle lord John Grey, but still suffering the queen's displeasure, and separated from her husband. Several interesting letters from her and her uncle to Cecil are among the Lansdowne MSS. vol. vi. They cannot be read without indignation at Elizabeth's unfeeling severity. Sorrow killed this poor young woman the next year, who was never permitted to see her husband again. Strype, i. 391. The earl of Hertford underwent a long imprisonment, and continued in obscurity during Elizabeth's reign; but had some public employments under her successor. He was twice afterwards married, and lived to a very advanced age, not dying till 1621, near sixty years after his ill-starred and ambitious love. It is worth while to read the epitaph on his monument in the S.E. aisle of Salisbury cathedral, an affecting testimony to the purity and faithfulness of an attachment, rendered still more sacred by misfortune and time. Quo desiderio veteres revocavit amores! I shall revert to the question of this marriage in a subsequent chapter.

[2] Id. 413. Strype, 410. Hales's treatise in favour of the authenticity of Henry's will is among the Harleian MSS. n. 537. and 555., and has also been printed in the Appendix to Hereditary Right Asserted, fol. 1713.

[3] Camden, p. 416., ascribes the powerful coalition formed against him in 1569, wherein Norfolk and Leicester were combined with all the catholic peers, to his predilection for the house of Suffolk. But it was more likely owing to their knowledge of his integrity and attachment to his sovereign, which would steadfastly oppose their wicked design of bringing about Norfolk's marriage with Mary, as well as to their jealousy of his influence. Carte reports, on the authority of the despatches of Fenelon, the French ambassador, that they intended to

favoured in parliament; the address of the commons in 1563, imploring the queen to settle the succession, contains several indications of a spirit unfriendly to the Scottish line. (D'Ewes, 81.) And a speech is extant, said to have been made as late as 1571, expressly vindicating the rival pretension.[1] If indeed we consider with attention the statute of 13 Eliz. c. 1., which renders it treasonable to deny that the sovereigns of this kingdom, with consent of parliament, might alter the line of succession, it will appear little short of a confirmation of that title, which the descendants of Mary Brandon derived from a parliamentary settlement. But the doubtful birth of lord Beauchamp and his brother, with an ignoble marriage, that Frances, the younger sister of lady Catherine Grey, had thought it prudent to contract, deprived this party of all political consequence much sooner, as I conceive, than the wisest of Elizabeth's advisers could have desired; and gave rise to various other pretensions, which failed not to occupy speculative or intriguing tempers throughout this reign.

We may well avoid the tedious and intricate paths of Scottish history, where each fact must be sustained by a controversial discussion. Every one will recollect, that Mary Stuart's retention of the arms and style of England gave the first, and as it proved, inexpiable provocation to Elizabeth. It is indeed true, that she was queen consort of France, a state lately at war with England, and that if the sovereigns of the latter country, even in peace, would persist in claiming the French throne, they could hardly complain of this retaliation. But although it might be difficult to find a diplomatic answer to this, yet every one was sensible of an important difference between a title retained through vanity, and expressive of pretensions long since abandoned, from one that several foreign powers were prepared to recognise, and a great part of the nation might perhaps only want opportunity to support.[2] If, however, after the death of Francis II. had set the queen of Scots

bring him to account for breaking off the ancient league with the house of Burgundy, or, in other words, for maintaining the protestant interest. Vol. iii. p. 483.

A papist writer, under the name of Andreas Philopater, gives an account of this confederacy against Cecil at some length. Norfolk and Leicester belonged to it; and the object was to defeat the Suffolk succession, which Cecil and Bacon favoured. Leicester betrayed his associates to the queen. It had been intended that Norfolk should accuse the two counsellors before the lords, eâ ratione ut è senatu regiâque abreptos ad curiæ januas in crucem agi præciperet, eoque perfecto rectè deinceps ad forum progressus explicaret populo tum hujus facti rationem, tum successionis etiam regnandi legitimam seriem, si quid forte reginæ humanitus accideret. P. 43.

[1] Strype, II. App. This speech seems to have been made while Catherine Grey was living; perhaps therefore it was in a former parliament, for no account that I have seen represents her as having been alive so late as 1571.

[2] There was something peculiar in Mary's mode of blazonry. She bore Scotland and England quarterly, the former being first; but over all was a half scutcheon of pretence with the arms of England, the sinister half being as it were obscured, in order to intimate that she was kept out of her right. Strype, vol. i. p. 8.

The despatches of Throckmorton, the English ambassador in France, bear continual testimony to the insulting and hostile manner in which Francis II. and his queen displayed their pretensions to our crown. Forbes's State Papers, vol. 1. passim. The following is an instance. At the entrance of the king and queen into Chatelherault, 23rd Nov. 1559, these lines formed the inscription over one of the gates:

Gallia perpetuis pugnaxque Britannia bellis — Olim odio inter se dimicuere pari.
Nunc Gallos totoque remotos orbe Britannos — Unum dos Mariæ cogit in imperium.
Ergo pace potes, Francisce, quod omnibus armis — Mille patres annis non potuere tui.

This offensive behaviour of the French court is the apology of Elizabeth's intrigues during the same period with the malecontents, which to a certain extent cannot be denied by any one who has read the collection above quoted; though I do not think Dr. Lingard warranted in

free from all adverse connections, she had with more readiness and apparent sincerity renounced a pretension which could not be made compatible with Elizabeth's friendship, she might perhaps have escaped some of the consequences of that powerful neighbour's jealousy. But, whether it were that female weakness restrained her from unequivocally abandoning claims which she deemed well founded, and which future events might enable her to realise even in Elizabeth's life-time, or whether she fancied that to drop the arms of England from her scutcheon would look like a dereliction of her right of succession, no satisfaction was fairly given on this point to the English court. Elizabeth took a far more effective revenge, by intriguing with all the male-contents of Scotland. But while she was endeavouring to render Mary's throne uncomfortable and insecure, she did not employ that influence against her in England which lay more fairly in her power. She certainly was not unfavourable to the queen of Scots' succession, however she might decline compliance with importunate and injudicious solicitations to declare it. She threw both Hales and one Thornton into prison for writing against that title. And when Mary's secretary, Lethington, urged that Henry's testament, which alone stood in their way, should be examined, alleging that it had not been signed by the king, she paid no attention to this imprudent request.[1]

The circumstances wherein Mary found herself placed on her arrival in Scotland were sufficiently embarrassing to divert her attention from any regular scheme against Elizabeth, though she may sometimes have indulged visionary hopes; nor is it probable, that with the most circumspect management she could so far have mitigated the rancour of some, or checked the ambition of others, as to find leisure for hostile intrigues. But her imprudent marriage with Darnley, and the far greater errors of her subsequent behaviour, by lowering both her resources and reputation as far as possible, seemed to be pledges of perfect security from that quarter. Yet it was precisely when Mary was become most feeble and helpless, that Elizabeth's apprehensions grew most serious and well-founded.

At the time when Mary, escaped from captivity, threw herself on the protection of a related, though rival queen, three courses lay open to Elizabeth, and were discussed in her councils. To restore her by force of arms, or rather by a mediation which would certainly have been effectual, to the throne which she had compulsorily abdicated, was the most generous, and would probably have turned out the most judicious proceeding. Reigning thus with tarnished honour and diminished power, she must have continually depended on the support

asserting her privity to the conspiracy of Amboise as a proved fact. Throckmorton was a man very likely to exceed his instructions; and there is much reason to believe that he did so. It is remarkable that no modern French writers that I have seen, Anquetil, Garnier, Lacretelle, or the editors of the General Collection of Memoirs, seem to have been aware of Elizabeth's secret intrigues with the king of Navarre and other protestant chiefs in 1559, which these letters, published by Forbes in 1740, demonstrate.

[1] Burnet, i. Append. 266. Many letters, both of Mary herself and of her secretary, the famous Maitland of Lethington, occur in Haynes's State Papers, about the end of 1561. In one of his to Cecil, he urges, in answer to what had been alleged by the English court, that a collateral successor had never been declared in any prince's life-time, that whatever reason there might be for that, "if the succession had remained untouched according to the law, yet where by a limitation men had gone about to prevent the providence of God and shift one into the place due to another, the offended party could not but seek the redress thereof." P. 373.

of England, and become little better than a vassal of its sovereign. Still it might be objected by many, that the queen's honour was concerned not to maintain too decidedly the cause of one accused by common fame, and even by evidence that had already been made public, of adultery and the assassination of her husband. To have permitted her retreat into France would have shown an impartial neutrality; and probably that court was too much occupied at home to have afforded her any material assistance. Yet this appeared rather dangerous; and policy was supposed, as frequently happens, to indicate a measure absolutely repugnant to justice, that of detaining her in perpetual custody.[1] Whether this policy had no other fault than its want of justice, may reasonably be called in question.

The queen's determination neither to marry nor limit the succession had inevitably turned every one's thoughts towards the contingency of her death. She was young, indeed; but had been dangerously ill, once in 1562,[2] and again in 1568. Of all possible competitors for the throne, Mary was incomparably the most powerful, both among the nobility and the people. Besides the undivided attachment of all who retained any longings for the ancient religion, and many such were to be found at Elizabeth's court and chapel, she had the stronghold of hereditary right, and the general sentiment that revolts from acknowledging the omnipotency of a servile parliament. Cecil, whom no one could suspect of partiality towards her, admits in a remarkable minute on the state of the kingdom, in 1569, that "the queen of Scots' strength standeth by the universal opinion of the world for the justice of her title, as coming of the ancient line." (Haynes, 580.) This was no doubt in some degree counteracted by a sense of the danger which her accession would occasion to the protestant church, and which, far more than its parliamentary title, kept up a sort of party for the house of Suffolk. The crimes imputed to her did not immediately gain credit among the people; and some of higher rank were too experienced politicians to turn aside for such considerations. She had always preserved her connections among the English nobility, of whom many were catholics, and others adverse to Cecil, by whose counsels the queen had been principally directed in all her conduct with regard to Scotland and its sovereign.[3] After the unfinished process of inquiry to which Mary submitted at York and Hampton Court, when the charge of participation in Darnley's murder had been substantiated by evidence at least that she did not disprove, and the whole course of

[1] A very remarkable letter of the earl of Sussex, Oct. 22. 1568, contains these words: "I think surely no end can be made good for England, except the person of the Scottish queen be detained, by one means or other, in England." The whole letter manifests the spirit of Elizabeth's advisers, and does no great credit to Sussex's sense of justice, but a great deal to his ability. Yet he afterwards became an advocate for the duke of Norfolk's marriage with Mary. Lodge's Illustrations, vol. ii. p. 4.

[2] Hume and Carte say, this first illness was the small-pox. But it appears by a letter from the queen to lord Shrewsbury, Lodge, 279., that her attack in 1571 was suspected to be that disorder.

[3] In a conversation which Mary had with one Rooksby, a spy of Cecil's, about the spring of 1566, she imprudently named several of her friends, and of others whom she hoped to win, such as the duke of Norfolk, the earls of Derby, Northumberland, Westmoreland, Cumberland, Shrewsbury. "She had the better hope of this, for that she thought them to be all of the old religion, which she meant to restore again with all expedition, and thereby win the hearts of the common people." The whole passage is worth notice. Haynes, 447. See also Melvil's Memoirs, for the dispositions of an English party towards Mary in 1566.

which proceedings created a very unfavourable impression both in England and on the continent, no time was to be lost by those who considered her as the object of their dearest hopes. She was in the kingdom; she might, by a bold rescue, be placed at their head; every hour's delay increased the danger of her being delivered up to the rebel Scots; and doubtless some eager protestants had already begun to demand her exclusion by an absolute decision of the legislature.

Elizabeth must have laid her account, if not with the disaffection of the catholic party, yet at least with their attachment to the queen of Scots. But the extensive combination that appeared, in 1569, to bring about by force the duke of Norfolk's marriage with that princess, might well startle her cabinet. In this combination Westmoreland and Northumberland, avowed catholics, Pembroke and Arundel, suspected ones, were mingled with Sussex and even Leicester, unquestioned protestants. The duke of Norfolk himself, greater and richer than any English subject, had gone such lengths in this conspiracy, that his life became the just forfeit of his guilt and folly. It is almost impossible to pity this unhappy man, who lured by the most criminal ambition, after proclaiming the queen of Scots a notorious adulteress and murderer, would have compassed a union with her at the hazard of his sovereign's crown, of the tranquillity and even independence of his country, and of the reformed religion.[1] There is abundant proof of his intrigues with the duke of Alva, who had engaged to invade the kingdom. His trial was not indeed conducted in a manner that we can approve (such was the nature of state proceedings in that age), nor can it, I think, be denied that it formed a precedent of constructive treason not easily reconcilable with the statute; but much evidence is extant that his prosecutors did not adduce; and no one fell by a sentence more amply merited, or the execution of which was more indispensable.[2]

Norfolk was the dupe throughout all this intrigue of more artful men; first of Murray and Lethington, who had filled his mind with ambitious hopes, and afterwards of Italian agents employed by Pius V. to procure a combination of the catholic party. Collateral to Norfolk's conspiracy, but doubtless connected with it, was that of the northern earls of Northumberland and Westmoreland, long prepared, and perfectly foreseen by the government, of which the ostensible and manifest aim was the re-establishment of popery.[3] Pius V., who took a far

[1] Murden's State Papers, 134. 180. Norfolk was a very weak man, the dupe of some very cunning ones. We may observe that his submission to the queen, Id. 153., is expressed in a style which would now be thought most pusillanimous in a man of much lower station, yet he died with great intrepidity. But such was the tone of those times; an exaggerated hypocrisy prevailed in every thing.

[2] State Trials, i. 957. He was interrogated by the queen's counsel with the most insidious questions. All the material evidence was read to the lords from written depositions of witnesses who might have been called, contrary to the statute of Edward VI. But the Burghley Papers, published by Haynes and Murden, contain a mass of documents relative to this conspiracy, which leave no doubt as to the most heinous charge, that of inviting the duke of Alva to invade the kingdom. There is reason to suspect that he feigned himself a catholic in order to secure Alva's assistance. Murden, p. 10.

[3] The northern counties were at this time chiefly catholic. "There are not," says Sadler, writing from thence, "ten gentlemen in this country who do favour and allow of her majesty's proceedings in the cause of religion." Lingard, vii. 54. It was consequently the great resort of the priests from the Netherlands, and in the feeble state of the protestant church there

more active part than his predecessor in English affairs, and had secretly instigated this insurrection, now published his celebrated bull, excommunicating and deposing Elizabeth, in order to second the efforts of her rebellious subjects.[1] This is almost the latest blast of that trumpet, which had thrilled the hearts of monarchs. Yet there was nothing in that sound that bespoke declining vigour; even the illegitimacy of Elizabeth's birth is scarcely alluded to; and the pope seems to have chosen rather to tread the path of his predecessor, and absolve her subjects from their allegiance, as the just and necessary punishment of her heresy.

Since nothing so much strengthens any government as an unsuccessful endeavour to subvert it, it may be thought that the complete failure of the rebellion under the earls of Northumberland and Westmoreland, with the detection and punishment of the duke of Norfolk, rendered Elizabeth's throne more secure. But those events revealed the number of her enemies, or at least of those in whom no confidence could be reposed. The rebellion, though provided against by the ministry, and headed by two peers of great family, but no personal weight, had not only assumed for a time a most formidable aspect in the north, but caused many to waver in other parts of the kingdom. (Strype, i. 546. 553. 556.) Even in Norfolk, an eminently protestant county, there was a slight insurrection in 1570, out of attachment to the duke.[2] If her greatest subject could thus be led astray from his faith and loyalty, if others not less near to her councils could unite with him in measures so contrary to her wishes and interests, on whom was she firmly to rely? Who, especially, could be trusted, were she to be snatched away from the world, for the maintenance of the protestant establishment under a yet unknown successor? This was the manifest and principal danger that her counsellors had to dread. Her own great reputation, and the respectful attachment of her people, might give reason to hope that no machinations would be successful against her crown; but let us reflect in what situation the kingdom would have been left by her death in a sudden illness, such as she had more than once experienced in earlier years, and again in 1571. "You must think," lord Burleigh writes to Walsingham, on that occasion, "such a matter would drive me to the end of my wits." And sir Thomas Smith expresses his fears in equally strong language.[3] Such statesmen do not entertain apprehensions lightly. Whom, in truth, could her privy council, on such an event, have resolved to proclaim? The house of Suffolk, had its right been more generally recognised than it was, lady Catherine being now dead, presented no undoubted heir. The young king of Scotland, an alien and an infant, could only have reigned through a regency: and it might have been difficult to have selected from the English nobility a

wanted sufficient ministers to stand up in its defence. Strype, i. 509. et post; ii. 183. Many of the gentry indeed were still disaffected in other parts towards the new religion. A profession of conformity was required in 1569 from all justices of the peace, which some refused, and others made against their consciences. Id. i. 567.

[1] Camden has quoted a long passage from Hieronymo Catena's Life of Pius V., published at Rome in 1588, which illustrates the evidence to the same effect contained in the Burghley Papers, and partly adduced on the duke of Norfolk's trial.

[2] Strype, i. 578. Camden, 428. Lodge, ii. 45.

[3] Strype, ii. 88. Life of Smith, 152

fit person to undertake that office, or at least one in whose elevation the rest would have acquiesced. It appears most probable that the numerous and powerful faction who had promoted Norfolk's union with Mary would have conspired again to remove her from her prison to the throne. Of such a revolution the disgrace of Cecil and Elizabeth's wisest ministers must have been the immediate consequence; and it is probable that the restoration of the catholic worship would have ensued. These apprehensions prompted Cecil, Walsingham, and Smith to press the queen's marriage with the duke of Anjou far more earnestly than would otherwise have appeared consistent with her interests. A union with any member of that perfidious court was repugnant to genuine protestant sentiments. But the queen's absolute want of foreign alliances, and the secret hostility both of France and Spain, impressed Cecil with that deep sense of the perils of the time which his private letters so strongly bespeak. A treaty was believed to have been concluded in 1567, to which the two last mentioned powers, with the emperor Maximilian and some other catholic princes were parties, for the extirpation of the protestant religion.[1] No alliance that the court of Charles IX. could have formed with Elizabeth was likely to have diverted it from pursuing this object; and it may have been fortunate that her own insincerity saved her from being the dupe of those who practised it so well. Walsingham himself, sagacious as he was, fell into the snares of that den of treachery, giving credit to the young king's assurances almost on the very eve of St. Bartholomew. (Strype. vol. ii.)

The bull of Pius V., far more injurious in its consequences to those it was designed to serve than to Elizabeth, forms a leading epoch in the history of our English catholics. It rested upon a principle never universally acknowledged, and regarded with much jealousy by temporal governments, yet maintained in all countries by many whose zeal and ability rendered them formidable,—the right vested in the supreme pontiff to depose kings for heinous crimes against the church. One Felton affixed this bull to the gates of the bishop of London's palace, and suffered death for the offence. So audacious a manifestation of disloyalty was imputed with little justice to the catholics at large, but might more reasonably lie at the door of those active instruments of Rome, the English refugee priests and jesuits dispersed over Flanders and lately established at Douay, who were continually passing into the kingdom, not only to keep alive the precarious faith of the laity, but, as was generally surmised, to excite them against their sovereign.[2] This produced the act of 13 Eliz. c. 2.; which, after

[1] Strype, i. 502. I do not give any credit whatever to this league, as printed in Strype, which seems to have been fabricated by some of the queen's emissaries. There had been, not perhaps a treaty, but a verbal agreement between France and Spain at Bayonne some time before; but its object was apparently confined to the suppression of protestantism in France and the Netherlands. Had they succeeded however in this, the next blow would have been struck at England. It seems very unlikely, that Maximilian was concerned in such a league.

[2] The college of Douay for English refugee priests was established in 1568 or 1569. Lingard, 374. Strype seems, but I believe through inadvertence, to put this event several years later. Annals. ii. 630. It was dissolved by Requesens, while governor of Flanders, but revived at Rheims in 1575, under the protection of the cardinal of Lorrain, and returned to Douay in 1593. Similar colleges were founded at Rome in 1579, at Valladolid in 1589, at St. Omer in 1596, and at Louvain in 1606.

reciting these mischiefs, enacts that all persons publishing any bull from Rome, or absolving and reconciling any one to the Romish church, or being so reconciled should incur the penalties of high treason; and such as brought into the realm any crosses, pictures, or superstitious things consecrated by the pope or under his authority should be liable to a præmunire. Those who should conceal or connive at the offenders were to be held guilty of misprision of treason. This statute exposed the catholic priesthood, and in great measure the laity, to the continual risk of martyrdom; for so many had fallen away from their faith through a pliant spirit of conformity with the times, that the regular discipline would exact their absolution and reconciliation before they could be reinstated in the church's communion. Another act of the same session, manifestly levelled against the partisans of Mary, and even against herself, makes it high treason to affirm that the queen ought not to enjoy the crown, but some other person; or to publish that she is a heretic, schismatic, tyrant, infidel, or usurper of the crown; or to claim right to the crown, or to usurp the same during the queen's life; or to affirm that the laws and statutes do not bind the right of the crown, and the descent, limitation, inheritance, or governance thereof. And whosoever should, during the queen's life, by any book or work written or printed, expressly affirm, before the same has been established by parliament, that any one particular person was or ought to be heir and successor to the queen, except the same be the natural issue of her body, or should print or utter any such book or writing, was for the first offence to be imprisoned a year, and to forfeit half his goods; and for the second to incur the penalties of a præmunire.[1]

It is impossible to misunderstand the chief aim of this statute. But the house of commons, in which the zealous protestants, or, as they were now rather denominated, puritans, had a predominant influence, were not content with these demonstrations against the unfortunate captive. Fear, as often happens, excited a sanguinary spirit amongst them; they addressed the queen upon what they called the great cause, that is, the business of the queen of Scots, presenting by their committee reasons gathered out of the civil law to prove that "it standeth not only with justice, but also with the queen's majesty's honour and safety, to proceed criminally against the pretended Scottish queen." (Strype, ii. 133. D'Ewes, 207.). Elizabeth, who could not really dislike these symptoms of hatred towards her rival, took the opportunity of simulating more humanity than the commons; and when they sent a bill to the upper house attainting Mary of treason, checked its course by proroguing the parliament. Her backwardness to concur in any measures for securing the kingdom, as far as in her lay, from those calamities which her decease might occasion, could not but displease Lord Burleigh. "All that we laboured for," he writes to Walsingham in 1572, "and had with full consent brought to fashion, I mear a law

[1] 13 Eliz. c. 1. This act was made at first retrospective, so as to affect every one who had at any time denied the queen's title. A member objected to this in debate as "a precedent most perilous." But sir Francis Knollys, Mr. Norton, and others, defended it. D'Ewes, 162. It seems to have been amended by the lords. So little notion had men of observing the first principles of equity towards their enemies! There is much reason from the debate to suspect, that the ex post facto words were levelled at Mary.

to make the Scottish queen unable and unworthy of succession to the crown, was by her majesty neither assented to, nor rejected, but deferred." Some of those about her, he hints, made herself her own enemy by persuading her not to countenance these proceedings in parliament. (Strype, ii. 135.) I do not think it admits of much question, that, at this juncture, the civil and religious institutions of England would have been rendered more secure by Mary's exclusion from a throne, which indeed, after all that had occurred, she could not be endured to fill without national dishonour. But the violent measures suggested against her life were hardly, under all the circumstances of her case, to be reconciled with justice; even admitting her privity to the northern rebellion and to the projected invasion by the duke of Alva. These however were not approved merely by an eager party in the commons: archbishop Parker does not scruple to write about her to Cecil—"If that only [one] desperate person were taken away, as by justice soon it might be, the queen's majesty's good subjects would be in better hope, and the papists' daily expectation vanquished." (Life of Parker. 354.) And Walsingham, during his embassy at Paris, desires that "the queen should see how much they (the papists) built upon the possibility of that dangerous woman's coming to the crown of England, whose life was a step to her majesty's death;" adding that "she was bound for her own safety and that of her subjects, to add to God's providence her own policy, so far as might stand with justice." (Strype's Annals, ii. 48.)

We cannot wonder to read that these new statutes increased the dissatisfaction of the Roman catholics, who perceived a systematic determination to extirpate their religion. Governments ought always to remember, that the intimidation of a few disaffected persons is dearly bought by alienating any large portion of the community.[1] Many retired to foreign countries, and receiving for their maintenance pensions from the court of Spain, became unhappy instruments of its ambitious enterprises. Those who remained at home could hardly think their oppression much mitigated by the precarious indulgences which Elizabeth's caprice, or rather the fluctuation of different parties in her councils, sometimes extended to them. The queen, indeed, as far as we can penetrate her dissimulation, seems to have been really averse to extreme rigour against her catholic subjects: and her greatest minister, as we shall more fully see afterwards, was at this time in the same sentiments. But such of her advisers as leaned towards the puritan faction, and too many of the Anglican clergy, whether puritan or not, thought no measure of charity or compassion should be extended to them. With the divines, they were idolaters; with the council, they were a dangerous and disaffected party; with the judges, they were refractory transgressors of statutes; on every side, they were obnoxious and oppressed. A few aged men having been set at liberty, Sampson, the famous puritan, himself a sufferer for conscience sake, wrote a letter of remonstrance to lord Burleigh. He urged in this that they should be compelled to hear sermons, though he would not

[1] Murden's Papers, p. 43., contain proof of the increased discontent among the catholics in consequence of the penal laws.

at first oblige them to communicate.[1] A bill having been introduced in the session of 1571, imposing a penalty for not receiving the communion, it was objected that consciences ought not to be forced. But Mr. Strickland entirely denied this principle, and quoted authorities against it. (D'Ewes, 161–177.) Even Parker, by no means tainted with puritan bigotry, and who had been reckoned moderate in his proceedings towards catholics, complained of what he called "a Machiavel government;" that is, of the queen's lenity in not absolutely rooting them out. (Strype's Life of Parker, 354.)

This indulgence, however, shown by Elizabeth, the topic of reproach in those times, and sometimes of boast in our own, never extended to any positive toleration, nor even to any general connivance at the Romish worship in its most private exercise. She published a declaration in 1570, that she did not intend to sift men's consciences, provided they observed her laws by coming to church; which, as she well knew, the greater part deemed inconsistent with their integrity.[2] Nor did the government always abstain from an inquisition into men's private thoughts. The inns of court were more than once purified of popery by examining their members on articles of faith. Gentlemen of good families in the country were harassed in the same manner. (Strype's Annals, ii. 110. 408.) One Sir Richard Shelley, who had long acted as a sort of spy for Cecil on the continent, and given much useful information, requested only leave to enjoy his religion without hindrance; but the queen did not accede to this without much reluctance and delay. (Id. iii. 127.) She had indeed assigned no other ostensible pretext for breaking off her own treaty of marriage with the archduke Charles, and subsequently with the dukes of Anjou and Alençon, than her determination not to suffer the mass to be celebrated even in her husband's private chapel. It is worthy to be repeatedly inculcated on the reader, since so false a colour has been often employed to disguise the ecclesiastical tyranny of this reign, that the most clandestine exercise of the Romish worship was severely punished. Thus we read in the life of Whitgift, that on information given that some ladies and others heard mass in the house of one Edwards by night, in the county of Denbigh, he being then bishop of Worcester and vice-president of Wales was directed to make inquiry into the facts; and finally was instructed to commit Edwards to close prison, and as for another

[1] Strype, ii. 330. See too in vol. iii. App. 68., a series of petitions intended to be offered to the queen and parliament, about 1583. These came from the puritanical mint, and show the dread that party entertained of Mary's succession, and of a relapse into popery. It is urged in these, that no toleration should be granted to the popish worship in private houses. Nor in fact had they much cause to complain that it was so. Knox's famous intolerance is well known. "One mass," he declared in preaching against Mary's private chapel at Holyrood House, "was more fearful unto him than if ten thousand armed enemies were landed in any part of the realm, on purpose to suppress the whole religion." M'Crie's Life of Knox, vol. ii. p. 24. In a conversation with Maitland he asserted most explicitly the duty of putting idolaters to death. Id. p. 120. Nothing can be more sanguinary than the reformer's spirit in this remarkable interview.' St. Dominic could not have surpassed him. It is strange to see men, professing all the while our modern creed of charity and toleration, extol these blood-thirsty bull-dogs of the sixteenth century. The English puritans, though I cannot cite any passages so strong as the foregoing, were much the bitterest enemies of the catholics. When we read a letter from any one, such as Mr. Topcliffe, very fierce against the latter, we may expect to find him put in a word in favour of silenced ministers.

[2] Strype's Annals, i. 582. Honest old Strype, who thinks church and state never in the wrong, calls this "a notable piece of favour."

person implicated, named Morice, "if he remained obstinate, he might cause some kind of torture to be used upon him, and the like order they prayed him to use with the others."[1] But this is one of many instances, the events of every day, forgotten on the morrow, and of which no general historian takes account. Nothing but the minute and patient diligence of such a compiler as Strype, who thinks no fact below his regard, could have preserved them from oblivion.[2]

It will not surprise those who have observed the effect of all persecution for matters of opinion upon the human mind, that during this period the Romish party continued such in numbers and in zeal, as to give the most lively alarm to Elizabeth's administration. One cause of this was beyond doubt the connivance of justices of the peace, a great many of whom were secretly attached to the same interest, though it was not easy to exclude them from the commission, on account of their wealth and respectability.[3] The facility with which catholic rites can

[1] Life of Whitgift, 83. See too p. 99., and Annals of Reformation, ii. 631., &c.; also Holingshed, ann. 1574, ad init.

[2] An almost incredible specimen of ungracious behaviour towards a Roman catholic gentleman is mentioned in a letter of Topcliffe, a man whose daily business was to hunt out and molest men for popery. "The next good news, but in account the highest, her majesty hath served God with great zeal and comfortable examples; for by her council two notorious papists, young Rookwood, the master of Euston-hall, where her majesty did lie upon Sunday now a fortnight, and one Downes, a gentleman, were both committed, the one to the town prison at Norwich, the other to the county prison there, for obstinate papistry; and seven more gentlemen of worship were committed to several houses in Norwich as prisoners; two of the Lovels, another Downes, one Beningfield, one Parry, and two others not worth memory for badness of belief.

"This Rookwood is a papist of kind [family] newly crept out of his late wardship. Her majesty, by some means I know not, was lodged at his house, Euston, far unmeet for her highness; nevertheless, the gentleman brought into her presence by like device, her majesty gave him ordinary thanks for his bad house, and her fair hand to kiss: but my lord chamberlain nobly and gravely understanding that Rookwood was excommunicated for papistry, called him before him, demanded of him how he durst presume to attempt her royal presence, he, unfit to accompany any Christian person; forthwith said he was fitter for a pair of stocks, commanded him out of the court, and yet to attend her council's pleasure at Norwich he was committed. And to dissyffer [sic] the gentleman to the full, a piece of plate being missed in the court, and searched for in his hay-house, in the hay-rick such an image of our lady was there found, as for greatness, for gayness, and workmanship, I did never see a match; and after a sort of country dances ended, in her majesty's sight the idol was set behind the people who avoided; she rather seemed a beast raised upon a sudden from hell by conjuring, than the picture for whom it had been so often and so long abused. Her majesty commanded it to the fire, which in her sight by the country folks was quickly done to her content, and unspeakable joy of every one but some one or two who had sucked of the idol's poisoned milk.

"Shortly after, a great sort of good preachers, who had been long commanded to silence for a little niceness, were licensed, and again commanded to preach: a greater and more universal joy to the countries, and the most of the court, than the disgrace of the papists: and the gentlemen of those parts, being great and hot protestants, almost before by policy discredited and disgraced, were greatly countenanced.

"I was so happy lately, amongst other good graces, that her majesty did tell me of sundry lewd papist beasts that have resorted to Buxton," &c. Lodge ii. 188. 30 Aug. 1578.

This Topcliffe was the most implacable persecutor of his age. In a letter to lord Burleigh, Strype, iv. 39., he urges him to imprison all the principal recusants, and especially women, "The farther off from their own family and friends the better." The whole letter is curious, as a specimen of the prevalent spirit, especially among the puritans, whom Topcliffe favoured. Instances of the ill-treatment experienced by respectable families (the Fitzherberts and Foljambes), and even aged ladies, without any other provocation than their recusancy, may be found in Lodge, ii. 372. 462.; iii. 22. But those farthest removed from puritanism partook sometimes of the same tyrannous spirit. Aylmer, bishop of London, renowned for his persecution of nonconformists, is said by Rishton de Schismate, p. 319., to have sent a young catholic lady to be whipped in Bridewell for refusing to conform. If the authority is suspicious (and yet I do not perceive that Rishton is a liar like Sanders), the fact is probable.

[3] Strype's Life of Smith, 171.; Annals, ii. 631. 636.; iii. 479.; and Append. 170. The last reference is to a list of magistrates sent up by the bishops from each diocese, with their characters. Several of these, but the wives of many more, were inclined to popery.

be performed in secret, as before observed, was a still more important circumstance. Nor did the voluntary exiles established in Flanders remit their diligence in filling the kingdom with emissaries. The object of many at least among them, it cannot for a moment be doubted, from the era of the bull of Pius V., if not earlier, was nothing less than to subvert the queen's throne. They were closely united with the court of Spain, which had passed from the character of an ally and pretended friend, to that of a cold and jealous neighbour, and at length of an implacable adversary. Though no war had been declared between Elizabeth and Philip, neither party had scrupled to enter into leagues with the disaffected subjects of the other. Such sworn vassals of Rome and Spain as an Allen or a Persons, were just objects of the English goverment's distrust: it is the extension of that jealousy to the peaceful and loyal which we stigmatize as oppressive, and even as impolitic.[1]

In concert with the directing powers of the Vatican and Escurial, the refugees redoubled their exertions about the year 1580. Mary was now wearing out her years in hopeless captivity; her son, though they did not lose hope of him, had received a strictly protestant education; while a new generation had grown up in England, rather inclined to diverge more widely from the ancient religion than to suffer its restoration. Such were they who formed the house of commons that met in 1581, discontented with the severities used against the puritans, but ready to go beyond any measures that the court might propose to subdue and extirpate popery. Here an act was passed which, after repeating the former provisions that had made it high treason to reconcile any of her majesty's subjects, or to be reconciled to the church of Rome, imposes a penalty of 20*l.* a month on all persons absenting themselves from church, unless they shall hear the English service at home: such as could not pay the same within three months after judgment were to be imprisoned until they should conform. The queen, by a subsequent act, had the power of seizing two thirds of the party's land, and all his goods, for default of payment. (23 Eliz. c. 1. and 29 Eliz. c. 6.) These grievous penalties on recusancy, as the wilful absence of catholics from church came now to be denominated, were

[1] Allen's Admonition to the Nobility and People of England, written in 1588, to promote the success of the Armada, is full of gross lies against the queen. See an analysis of it in Lingard, note B. B. Mr. Butler fully acknowledges, what indeed the whole tenor of historical documents for this reign confirms, that Allen and Persons were actively engaged in endeavouring to dethrone Elizabeth, by means of a Spanish force. But it must, I think, be candidly confessed by protestants, that they had very little influence over the superior catholic laity. And an argument may be drawn from hence against those who conceive the political conduct of catholics to be entirely swayed by their priests, when even in the sixteenth century the efforts of these able men, united with the head of their church, could produce so little effect. Strype owns that Allen's book gave offence to many catholics. iii. 560. Life of Whitgift, 505. One Wright of Douay answered a case of conscience, whether catholics might take up arms to assist the king of Spain against the queen, in the negative. Id. 251. Annals, 565. This man though a known loyalist, and actually in the employment of the ministry, was afterwards kept in a disagreeable sort of confinement, in the dean of Westminster's house, of which he complains with much reason. Birch's Memoirs, vol. ii. p. 71. et alibi. Though it does not fall within the province of a writer on the constitution to enlarge on Elizabeth's foreign policy, I must observe, in consequence of the laboured attempts of Dr. Lingard to represent it as perfectly Machiavelian, and without any motive but wanton malignity, that, with respect to France and Spain, and even Scotland, it was strictly defensive, and justified by the law of self-preservation; though, in some of the means employed, she did not always adhere more scrupulously to good faith than her enemies.

doubtless founded on the extreme difficulty of proving an actual celebration of their own rites. But they established a persecution which fell not at all short in principle of that for which the inquisition had become so odious. Nor were the statutes merely designed for terror's sake, to keep a check over the disaffected, as some would pretend. They were executed in the most sweeping and indiscriminating manner, unless perhaps a few families of high rank might enjoy a connivance.[1]

It had certainly been the desire of Elizabeth to abstain from capital punishments on the score of religion. The first instance of a priest suffering death by her statutes was in 1577, when one Mayne was hanged at Launceston, without any charge against him except his religion, and a gentleman who had harboured him was sentenced to imprisonment for life.[2] In the next year, if we may trust the zealous catholic writers, Thomas Sherwood, a boy of fourteen years, was executed for refusing to deny the temporal power of the pope, when urged by his judges.[3] But in 1581 several seminary priests from Flanders having been arrested, whose projects were supposed, perhaps not wholly without foundation, to be very inconsistent with their allegiance, it was unhappily deemed necessary to hold out some more conspicuous examples of rigour. Of those brought to trial the most eminent was Campian, formerly a protestant, but long known as the boast of Douay for his learning and virtues. (Strype's Parker, 375.) This man, so justly respected, was put to the rack, and revealed through torture the names of some catholic gentlemen with whom he had conversed. (Strype's Annals, ii. 644.) He appears to have been indicted, along with several other priests, not on the recent statutes, but on that of 25 Edw. III. for compassing and imagining the queen's death. Nothing that I have read affords the slightest proof of Campian's concern in treasonable practices, though his connections, and profession as a jesuit, render it by no means unlikely. If we may confide in the published trial, the prosecution was as unfairly conducted, and supported by as slender evidence, as any perhaps which can be found in our books.[4] But as this account, wherein Campian's language is full of a dignified eloquence, rather seems to have been compiled by a partial hand, its faithfulness may not be above suspicion. For the same reason I hesitate to admit his alleged declarations at the place of execution, where, as well as at his trial, he is represented to have expressly acknowledged Elizabeth, and to have prayed for her as his queen *de facto* and *de jure*. For this was one of the questions propounded to him before his trial, which he refused to answer, in such a manner as betrayed his way of thinking. Most of those inter-

[1] Strype's Whitgift, p. 117., and other authorities, passim.

[2] Camden, Lingard. Two others suffered at Tyburn not long afterwards for the same offence. Holingshed, 344. See in Butler's Mem. of Catholics, vol. iii. p. 382., an affecting narrative, from Dodd's Church History, of the suffering of Mr. Tregian and his family, the gentleman whose chaplain Mayne had been. I see no cause to doubt its truth.

[3] Ribadeneira, Continuatio Sanderi et Rishtoni de Schismate Anglicano, p. 111. Philopater, p. 247. This circumstance of Sherwood's age is not mentioned by Stowe; nor does Dr. Lingard advert to it. No woman was put to death under the penal code, so far as I remember; which of itself distinguishes the persecution from that of Mary, and of the house of Austria in Spain and the Netherlands.

[4] State Trials, i. 1050.; from the Phœnix Britannicus.

rogated at the same time, on being pressed whether the queen was their lawful sovereign whom they were bound to obey, notwithstanding any sentence of deprivation that the pope might pronounce, endeavoured, like Campian, to evade the snare. A few, who unequivocally disclaimed the deposing power of the Roman see, were pardoned.[1] It is more honourable to Campian's memory, that we should reject these pretended declarations, than imagine him to have made them at the expense of his consistency and integrity. For the pope's right to deprive kings of their crowns was in that age the common creed of the jesuits, to whose order Campian belonged; and the continent was full of writings published by the English exiles, by Sanders, Bristow, Persons, and Allen, against Elizabeth's unlawful usurpation of the throne. But many availed themselves of what was called an explanation of the bull of Pius V., given by his successor Gregory XIII.; namely, that the bull should be considered as always in force against Elizabeth and the heretics, but should only be binding on catholics when due execution of it could be had.[2] This was designed to satisfy the consciences of some papists in submitting to her government, and taking the oath of allegiance. But in thus granting a permission to dissemble, in hope of better opportunity for revolt, this interpretation was not likely to tranquillise her council, or conciliate them towards the Romish party. The distinction, however, between a king by possession and one by right, was neither heard for the first nor for the last time, in the reign of Elizabeth. It is the lot of every government that

[1] State Trials, i. 1078. Butler's English Catholics, i. 184: 244. Lingard, vii. 182.; whose remarks are just and candid. A tract, of which I have only seen an Italian translation, printed at Macerata in 1585, entitled Historia del glorioso martirio di diciotto sacerdoti e un secolare, fatti morire in Inghilterra per la confessione e difensione della fede cattolica, by no means asserts that he acknowledged Elizabeth to be queen de jure, but rather that he refused to give an opinion as to her right. He prayed however for her as a queen. "Io ho pregato, e prego per lei. All' ora il Signor Howardo li domandò per qual regina egli pregasse, se per Elisabetta? Al quale rispose, Si, per Elisabetta." Mr. Butler quotes this tract in English.

The trials and deaths of Campian and his associates are told in the continuation of Holingshed, with a savageness and bigotry which, I am very sure, no scribe for the Inquisition could have surpassed, p. 456. But it is plain, even from this account, that Campian owned Elizabeth as queen. See particulars p. 448., for the insulting manner in which this writer describes the pious fortitude of these butchered ecclesiastics.

[2] Strype, ii. 637. Butler's Eng. Catholics, i. 196. The earl of Southampton asked Mary's ambassador, bishop Lesley, whether, after the bull, he could in conscience obey Elizabeth. Lesley answered, that as long as she was the stronger, he ought to obey her. Murden, p. 30. The writer quoted before by the name of Andreas Philopater (Persons, translated by Cresswell, according to Mr. Butler, vol. iii. p. 236.), after justifying at length the resistance of the League to Henry IV., adds the following remarkable paragraph: "Hinc etiam infert universa theologorum et jurisconsultorum schola, et est certum et de fide, quemcunque principem christianum, si a religione catholicâ manifestè deflexerit, et alios avocare voluerit, excidere statim omni potestate et dignitate, ex ipsâ vi juris tum divini tum humani, hocque ante omnem sententiam supremi pastoris ac judicis contra ipsum prolatam; et subditos quoscunque liberos esse ab omni juramenti obligatione, quod ei de obedientiâ tanquam principi legitimo præstitissent, posseque et debere (si vires habeant) istiusmodi hominem, tanquam apostatam, hæreticum, ac Christi domini desertorem, et inimicum reipublicæ suæ, hostemque ex hominum christianorum dominatu ejicere, ne alios inficiat, vel suo exemplo aut imperio a fide avertat," p. 149. He quotes four authorities for this in the margin, from the works of divines or economists.

This broad duty, however, of expelling a heretic sovereign, he qualifies by two conditions; first, that the subjects should have the power, "ut vires habeant idoneas ad hoc subditi;" secondly, that the heresy be undeniable. There can, in truth, be no doubt that the allegiance professed to the queen by the seminary priests and jesuits, and, as far as their influence extended, by all catholics, was with this reservation— "if they should be strong enough to throw it off. See the same tract, p. 229. But after all, when we come fairly to consider it, is not this the case with every disaffected party in every state? a good reason for watchfulness, but none for extermination.

is not founded on the popular opinion of legitimacy to receive only a precarious allegiance. Subject to this reservation, which was pretty generally known, it does not appear that the priests or other Roman catholics, examined at various times during this reign, are more chargeable with insincerity or dissimulation than accused persons generally are.

The public executions, numerous as they were, scarcely form the most odious part of this persecution. The common law of England has always abhorred the accursed mysteries of a prison-house; and neither admits of torture to extort confession, nor of any penal infliction not warranted by a judicial sentence. But this law, though still sacred in the courts of justice, was set aside by the privy council under the Tudor line. The rack seldom stood idle in the Tower for all the latter part of Elizabeth's réign.[1] To those who remember the annals of their country, that dark and gloomy pile affords associations not quite so numerous and recent as the Bastile, yet enough to excite our hatred and horror. But standing as it does in such striking contrast to the fresh and flourishing constructions of modern wealth, the proofs and the rewards of civil and religious liberty, it seems like a captive tyrant, reserved to grace the triumph of a victorious republic, and should teach us to reflect in thankfulness, how highly we have been elevated in virtue and happiness above our forefathers.[2]

Such excessive severities under the pretext of treason, but sustained by very little evidence of any other offence than the exercise of the catholic ministry, excited indignation throughout a great part of Europe. The queen was held forth in pamphlets, dispersed every where from Rome and Douay, not only as a usurper and heretic, but a tyrant more ferocious than any heathen persecutor, for inadequate parallels to whom they ransacked all former history.[3] These exaggerations, coming from the very precincts of the inquisition, required the unblushing forehead of bigotry; but the charge of cruelty stood on too

[1] Rishton and Ribadeneira. See in Lingard, note U., a specification of the different kinds of torture used in this reign.

The government did not pretend to deny the employment of torture. But the puritans, eager as they were to exert the utmost severity of the law against the professors of the old religion, had more regard to civil liberty than to approve such a violation of it. Beal, clerk of the council, wrote about 1585, a vehement book against the ecclesiastical system, from which Whitgift picks out various enormous propositions, as he thinks them; one of which is, "that he condemns without exception of any cause, racking of grievous offenders, as being cruel, barbarous, contrary to law, and unto the liberty of English subjects." Strype's Whitgift, p. 212.

[2] There is no line in Homer which I repeat more frequently, or with greater pleasure, than the boast of Sthenelus,—

Ημεις τοι πατέρων μεγ' ἀμείνονες εὐχόμεθ' εἶναι.

This is a truth which the impartial study of history persuades us; and yet, like other truths, it has its limitations.

[3] The persecution of catholics in England was made use of as an argument against permitting Henry IV. to reign in France, as appears by the title of a tract published in 1586: Avertissement des catholiques, Anglois aux François catholiques, du danger où ils sont de perdre leur religion, et d'expérimenter, comme en Angleterre, la cruauté des ministres, s'ils reçoivent à la couronne un roy qui soit hérétique. It is in the British Museum.

One of the attacks on Elizabeth deserves some notice, as it has lately been revived. In the statute 13 Eliz. an expression is used, "her majesty, and the natural issue of her body," instead of the more common legal phrase, "lawful issue." This probably was adopted by the queen out of prudery, as if the usual term implied the possibility of her having unlawful issue. But the papistical libellers put the most absurd interpretation on the word "natural," as if it was meant to secure the succession for some imaginary bastards by Leicester. And Dr. Lingard is not ashamed to insinuate the same suspicion, vol. viii. p. 81, note. Surely what was con-

many facts to be passed over, and it was thought expedient to repel it by two remarkable pamphlets, both ascribed to the pen of lord Burleigh. One of these, entitled "The Execution of Justice in England for Maintenance of Public and Private Peace," appears to have been published in 1583. It contains an elaborate justification of the late prosecutions for treason, as no way connected with religious tenets, but grounded on the ancient laws for protection of the queen's person and government from conspiracy. It is alleged that a vast number of catholics, whether of the laity or priesthood, among whom the deprived bishops are particularly enumerated, had lived unmolested on the score of their faith, because they paid due temporal allegiance to their sovereign. Nor were any indicted for treason, but such as obstinately maintained the pope's bull depriving the queen of her crown. And even of these offenders as many as after condemnation would renounce their traitorous principles, had been permitted to live; such was her majesty's unwillingness, it is asserted, to have any blood spilled without this just and urgent cause proceeding from themselves. But that any matter of opinion, not proved to have ripened into an overt act, and extorted only, or rather conjectured, through a compulsive inquiry, could sustain, in law or justice, a conviction for high treason, is what the author of this pamphlet has not rendered manifest.[1]

A second and much shorter paper bears for title, "A Declaration of the favourable dealing of her Majesty's Commissioners, appointed for the examination of certain traitors, and of tortures unjustly reported to have been done upon them for matter of religion." Its scope was to palliate the imputation of excessive cruelty with which Europe was then resounding. Those who revere the memory of lord Burleigh must blush for this pitiful apology. "It is affirmed for truth," he says, "that the forms of torture in their severity or rigour of execution have not been such and in such manner performed, as the slanderers and seditious libellers have published. And that even the principal offender, Campian himself, who was sent and came from Rome, and continued here in sundry corners of the realm, having secretly wandered in the greater part of the shires of England in a disguised suit, to be intent to make special preparation of treasons, was never so racked but that he was perfectly able to walk and to write, and did presently write and subscribe all his confessions. The queen's servants, and warders,

genial to the dark malignity of Persons, and the blind frenzy of Whitaker, does not become the good sense, I cannot say the candour, of this writer.

It is true that some, not prejudiced against Elizabeth, have doubted whether "Cupid's fiery dart" was as effectually quenched in the "chaste beams of the watery moon," as her poet intimates. This I must leave to the reader's judgment. She certainly went strange lengths of indelicacy. But, if she might sacrifice herself to the queen of Cnidus and Paphos, she was unmercifully severe to those about her, of both sexes, who showed any inclination to that worship though under the escort of Hymen. Miss Aikin, in her well-written and interesting Memoirs of the Court of Elizabeth, has collected several instances from Harrington and Birch. It is by no means true, as Dr. Lingard asserts, on the authority of one Faunt, an austere puritan, that her court was dissolute, comparatively at least with the general character of courts; though neither was it as virtuous as the enthusiasts of the Elizabethan period suppose.

[1] Somers' Tracts, i. 189. Strype, iii. 205. 265. 480. Strype says that he had seen the manuscript of this tract in lord Burleigh's hand-writing. It was answered by cardinal Allen, to whom a reply was made by poor Stubbe, after he had lost his right hand. An Italian translation of the Execution of Justice was published in London in 1584. This shows how anxious the queen was to repel the charges of cruelty, which she must have felt to be not wholly unfounded.

whose office and act it is to handle the rack, were ever by those that attended the examinations specially charged to use it in so charitable a manner as such a thing might be. None of those who were at any time put to the rack," he proceeds to assert, "were asked, during their torture, any question as to the points of doctrine; but merely concerning their plots and conspiracies, and the persons with whom they had had dealings, and what was their own opinion as to the pope's right to deprive the queen of her crown. Nor was any one so racked until it was rendered evidently probable by former detections or confessions that he was guilty; nor was the torture ever employed to wring out confessions at random; nor unless the party had first refused to declare the truth at the queen's commandment." Such miserable excuses serve only to mingle contempt with our detestation. (Somers' Tracts, p. 209.) But it is due to Elizabeth to observe, that she ordered the torture to be disused: and upon a subsequent occasion, the quartering of some concerned in Babington's conspiracy having been executed with unusual cruelty, gave directions that the rest should not be taken down from the gallows until they were dead. (State Trials, i. 1160.)

I should be reluctant, but for the consent of several authorities, to ascribe this little tract to lord Burleigh, for his honour's sake. But we may quote with more satisfaction a memorial addressed by him to the queen about the same year, 1583, full not only of sagacious, but just and tolerant advice. "Considering," he says, "that the urging of the oath of supremacy must needs, in some degree, beget despair, since in the taking of it, he [the papist] must either think he doeth an unlawful act, as, without the special grace of God, he cannot think otherwise, or else, by refusing it, must become a traitor, which, before some hurt done, seemeth hard; I humbly submit this to your excellent consideration, whether, with as much security of your majesty's person and state, and more satisfaction for them, it were not better to leave the oath to this sense, that whosoever would not bear arms against all foreign princes, and namely the pope, that should in any way invade your majesty's dominions, he should be a traitor. For, hereof, this commodity will ensue, that those papists, as I think most papists would, that should take this oath, would be divided from the great mutual confidence which is now between the pope and them, by reason of their great afflictions for him; and such priests as would refuse that oath then, no tongue could say for shame that they suffer for religion, if they did suffer.

"But here it may be objected, they would dissemble and equivocate with this oath, and that the pope would dispense with them in that case. Even so may they with the present oath both dissemble and equivocate, and also have the pope's dispensation for the present oath, as well as for the other. But this is certain, that whomsoever the conscience, or fear of breaking an oath doth bind, him would that oath bind. And that they make conscience of an oath, the trouble, losses, and disgraces that they suffer for refusing the same do sufficiently testify; and you know that the perjury of either oath is equal."

These sentiments are not such as bigoted theologians were then, or have been since, accustomed to entertain. "I account," he says afterwards, "that putting to death does no ways lessen them; since

we find, by experience, that it worketh no such effect, but, like hydra's heads, upon cutting off one, seven grow up, persecution being accounted as the badge of the church: and therefore they should never have the honour to take any pretence of martyrdom in England, where the fulness of blood and greatness of heart is such that they will even for shameful things go bravely for death; much more, when they think themselves to climb heaven, and this vice of obstinacy seems to the common people a divine constancy; so that for my part I wish no lessening of their number, but by preaching and by education of the younger under schoolmasters." And hence the means he recommends for keeping down popery, after the encouragement of diligent preachers and schoolmasters, are, "the taking order, that, from the highest counsellor to the lowest constable, none shall have any charge or office but such as will really pray and communicate in their congregation according to the doctrine received generally into this realm;" and next, the protection of tenants against their popish landlords, "that they be not put out of their living, for embracing the established religion."—"This," he says, "would greatly bind the commons' hearts unto you, in whom indeed consisteth the power and strength of your realm; and it will make them less, or nothing at all, depend on their landlords. And although there may hereby grow some wrong, which the tenants upon that confidence may offer to their landlords, yet those wrongs are very easily, even with one wink of your majesty's, redressed; and are nothing comparable to the danger of having many thousands depending on the adverse party." (Somers' Tracts, 164.)

The strictness used with recusants, which much increased from 1579 or 1580, had the usual consequence of persecution, that of multiplying hypocrites. For, in fact, if men will once bring themselves to comply, to take all oaths, to practise all conformity, to oppose simulation and dissimulation to arbitrary inquiries, it is hardly possible that any government should not be baffled. Fraud becomes an over-match for power. The real danger meanwhile, the internal disaffection, remains as before, or is aggravated. The laws enacted against popery were precisely calculated to produce this result. Many indeed, especially of the female sex, whose religion, lying commonly more in sentiment than reason, is less ductile to the sophisms of worldly wisdom, stood out and endured the penalties. But the oath of supremacy was not refused, the worship of the church was frequented, by multitudes who secretly repined for a change; and the council, whose fear of open enmity had prompted their first severities, were led on by the fear of dissembled resentment to devise yet further measures of the same kind. Hence, in 1584, a law was enacted, enjoining all jesuits, seminary priests, and other priests, whether ordained within or without the kingdom, to depart from it within forty days, on pain of being adjudged traitors. The penalty of fine and imprisonment at the queen's pleasure was inflicted on such as knowing any priest to be within the realm should not discover it to a magistrate. This seemed to fill up the measure of persecution, and to render the longer preservation of this obnoxious religion absolutely impracticable. Some of its adherents presented a petition against this bill, praying that they might not be suspected of disloyalty on account of refraining from the public worship, which

they did to avoid sin; and that their priests might not be banished from the kingdom.[1] And they all very justly complained of this determined oppression. The queen, without any fault of theirs, they alleged, had been alienated by the artifices of Leicester and Walsingham. Snares were laid to involve them unawares in the guilt of treason; their steps were watched by spies; and it became intolerable to continue in England. Camden, indeed, asserts that counterfeit letters were privately sent in the name of the queen of Scots or of the exiles, and left in papists' houses.[2] A general inquisition seems to have been made about this time; but whether it was founded on sufficient grounds of previous suspicion, we cannot absolutely determine. The earl of Northumberland, brother of him who had been executed for the rebellion of 1570, and the earl of Arundel, son of the unfortunate duke of Norfolk, were committed to the Tower, where the former put an end to his own life, (for we cannot charge the government with an unproved murder); and the second, after being condemned for a traitorous correspondence with the queen's enemies, died in that custody. But whether or no some conspiracies (I mean more active than usual, for there was one perpetual conspiracy of Rome and Spain during most of the queen's reign,) had preceded these severe and unfair methods, by which her ministry counteracted them, it was not long before schemes, more formidable than ever, were put in action against her life. As the whole body of catholics were irritated and alarmed by the laws of proscription against their clergy, and by the heavy penalties on recusancy, which, as they alleged, showed a manifest purpose to reduce them to poverty;[3] so some desperate men saw no surer means to rescue their cause than the queen's assassination. One Somerville, half a lunatic, and Parry, a man who, long employed as a spy upon the papists, had learned to serve with sincerity those he was sent to betray, were the first who suffered death for unconnected plots against Elizabeth's life.[4] More deep-laid machinations were carried on by several catholic laymen at home and abroad, among whom a

[1] Strype, iii. 298. Shelley, though notoriously loyal, and frequently employed by Burleigh, was taken up and examined before the council for preparing this petition.

[2] P. 591. Proofs of the text are too numerous for quotation, and occur continually to a reader of Strype's 2d and 3d vols. In vol. 3. App. 158. we have a letter to the queen from one Antony Tyrrel, a priest, who seems to have acted as an informer, wherein he declares all his accusations of catholics to be false. This man had formerly professed himself a protestant, and returned afterwards to the same religion; so that his veracity may be dubious. So, a little further on, we find in the same collection, p. 250., a letter from one Bennet, a priest, to lord Arundel, lamenting the false accusations he had given in against him, and craving pardon. It is always possible, as I have just hinted, that these retractations may be more false than the charges. But ministers who employ spies, without the utmost distrust of their information, are sure to become their dupes, and end by the most violent injustice and tyranny.

[3] The rich catholics compounded for their recusancy by annual payments, which were of some consideration in the queen's rather scanty revenue. A list of such recusants, and of the annual fines paid by them in 1594, is published in Strype, iv. 197.; but is plainly very imperfect. The total was 3323*l.* 1*s.* 10*d.* A few paid as much as 140*l.* per annum. The average seems however to have been about 20*l.* Vol iii. App. 153.; see also p. 258. Probably these compositions, though oppressive, were not quite so serious as the catholics pretended.

[4] Parry seems to have been privately reconciled to the church of Rome about 1580; after which he continued to correspond with Cecil, but generally recommending some catholics to mercy. He says, in one letter, that a book printed at Rome, De Persecutione Anglicanæ, had raised a barbarous opinion of our cruelty; and that he could wish that in those cases it might please her majesty to pardon the dismembering and drawing. Strype, iii. 260. He sat afterwards in the parliament of 1584, taking of course the oath of supremacy, where he alone opposed the act against catholic priests. Parl. Hist. 822. Whether he were actually guilty of

brother of lord Paget was the most prominent.[1] These had in view two objects, the deliverance of Mary, and the death of her enemy. Some perhaps who were engaged in the former project did not give countenance to the latter. But few, if any, ministers have been better served by their spies than Cecil and Walsingham. It is surprising to see how every letter seems to have been intercepted, every thread of these conspiracies unravelled, every secret revealed to these wise counsellors of the queen. They saw that while one lived, whom so many deemed the presumptive heir, and from whose succession they anticipated, at least in possibility, an entire reversal of all that had been wrought for thirty years, the queen was as a mark for the pistol or dagger of every zealot. And fortunate, no question, they thought it, that the detection of Babington's conspiracy enabled them with truth, or a semblance of truth, to impute a participation in that crime to the most dangerous enemy, whom for their mistress, their religion, or themselves, they had to apprehend.

Mary had now consumed the best years of her life in custody; and, though still the perpetual object of the queen's vigilance, had perhaps gradually become somewhat less formidable to the protestant interest. Whether she would have ascended the throne, if Elizabeth had died during the latter years of her imprisonment, must appear very doubtful, when we consider the increasing strength of the puritans, the antipathy of the nation to Spain, the prevailing opinion of her consent to Darnley's murder, and the obvious expedient of treating her son, now

plotting against the queen's life, for this part of his treason he denied at the scaffold, I cannot say; but his speech there made contained some very good advice to her. The ministry garbled this before its publication in Holingshed and other books; but Strype has preserved a genuine copy; vol. iii. App. 102. It is plain that Parry died a catholic; though some late writers of that communion have tried to disclaim him. Dr. Lingard, it may be added, admits that there were many schemes to assassinate Elizabeth, though he will not confess any particular instance. "There exists," he says, "in the archives at Simancas several notices of such offers." P. 384.

[1] It might be inferred from some authorities that the catholics had become in a great degree disaffected to the queen about 1584, in consequence of the extreme rigour practised against them. In a memoir of one Crichton, a Scots jesuit, intended to show the easiness of invading England, he says, that "all the catholics without exception favour the enterprise; first, for the sake of the restitution of the catholic faith; secondly, for the right and interest which the queen of Scots has to the kingdom, and to deliver her out of prison; thirdly, for the great trouble and misery they endured more and more, being kept out of all employments, and dishonoured in their own countries, and treated with great injustice and partiality when they have need to recur to law; and also for the execution of the laws touching the confiscation of their goods in such sort as in so short time would reduce the catholics to extreme poverty." Strype. iii. 415. And in the report of the earl of Northumberland's treasons, laid before the star-chamber, we read that "Throckmorton said, that the bottom of this enterprise, which was not to be known to many, was, that if a toleration of religion might not be obtained without alteration of the government, that then the government should be altered, and the queen removed." Somers' Tracts, vol. i. p. 206. Further proofs that the rigour used towards the catholics was the great means for promoting Philip's designs occur in Birch's Memoirs of Elizabeth. i. 82. et alibi.

We have also a letter from Persons in England to Allen in 1586, giving a good account of the zeal of the catholics, though a very bad one of their condition through severe imprisonment and other ill-treatment. Strype, iii. 412. and App. 151. Rishton and Ribadeneira bear testimony that the persecution had rendered the laity more zealous and sincere. De Schismate, 1. iii. 320., and 1. iv. 53.

Yet to all this we may oppose their good conduct in the year of the Spanish Armada, and in general during the queen's reign; which proves that the loyalty of the main body was more firm than their leaders wished, or their enemies believed. However, if any of my readers should incline to suspect that there was more disposition among this part of the community to throw off their allegiance to the queen altogether than I have admitted, he may possibly be in the right; and I shall not impugn his opinions, provided he concurs in attributing the whole or nearly the whole, of this disaffection to her unjust aggressions on the liberty of conscience.

advancing to manhood, as the representative of her claim. The new projects imputed to her friends even against the queen's life exasperated the hatred of the protestants against Mary. An association was formed in 1584, the members of which bound themselves by oath "to withstand and pursue, as well by force of arms, as by all other means of revenge, all manner of persons, of whatsoever state they shall be, and their abettors, that shall attempt any act, or counsel, or consent to any thing that shall tend to the harm of her majesty's royal person; and never to desist from all manner of forcible pursuit against such persons, to the utter extermination of them, their counsellors, aiders, and abettors. And if any such wicked attempt against her most royal person shall be taken in hand or procured, whereby any that have, may or shall pretend title to come to this crown by the untimely death of her majesty so wickedly procured, (which God of his mercy forbid!) that the same may be avenged, we do not only bind ourselves both jointly and severally never to allow, accept or favour any such pretended successor, by whom or for whom any such detestable act shall be attempted or committed, as unworthy of all government in any christian realm or civil state, but do also further vow and promise, as we are most bound, and that in the presence of the eternal and everlasting God, *to prosecute such person or persons to death*, with our joint and particular forces, and to act the utmost revenge upon them, that by any means we or any of us can devise and do, or cause to be devised and done for their utter overthrow and extirpation." (State Trials, i. 1162.)

The pledge given by this voluntary association received the sanction of parliament in an act "for the security of the queen's person, and continuance of the realm in peace." This statute enacts, that if any invasion or rebellion should be made by or for any person pretending title to the crown after her majesty's decease, or if any thing be confessed or imagined tending to the hurt of her person with the privity of any such person, a number of peers, privy counsellors, and judges, to be commissioned by the queen, should examine and give judgment on such offences and all circumstances relating thereto; after which judgment all persons against whom it should be published should be disabled for ever to make any such claim. (27 Eliz. c. i.) I omit some further provisions to the same effect, for the sake of brevity. But we may remark, that this statute differs from the associators' engagement, in omitting the outrageous threat of pursuing to death any person, whether privy or not to the design, on whose behalf an attempt against the queen's life should be made. The main intention of the statute was to procure, in the event of any rebellious movements, what the queen's counsellors had long ardently desired to obtain from her, an absolute exclusion of Mary from the succession. But if the scheme of assassination devised by some of her desperate partisans, had taken effect, however questionable might be her concern in it, I have little doubt that the rage of the commons would, with or without some process of law, have instantly avenged it in her blood. This was, in the language of parliament, their great cause; an expression which, though it may have an ultimate reference to the general interest of religion, is never applied, so far as I remember, but to the punishment of Mary,

which they had demanded in 1572, and now clamoured for in 1586. The addresses of both houses to the queen, to carry the sentence passed by the commissioners into effect, her evasive answers and feigned reluctance, as well as the strange scenes of hypocrisy which she acted afterwards, are well-known matters of history, upon which it is unnecessary to dwell. No one will be found to excuse the hollow affectation of Elizabeth; but the famous sentence that brought Mary to the scaffold, though it has certainly left in popular opinion a darker stain on the queen's memory than any other transaction of her life, if not capable of complete vindication, has at least encountered a disproportioned censure.

It is of course essential to any kind of apology for Elizabeth in this matter, that Mary should have been assenting to a conspiracy against her life. For it could be no real crime to endeavour at her own deliverance; nor, under the circumstances of so long and so unjust a detention, would even a conspiracy against the aggressor's power afford a moral justification for her death. But though the proceedings against her are by no means exempt from the shameful breach of legal rules, almost universal in trials for high treason during that reign, the witnesses not having been examined in open court; yet the depositions of her two secretaries, joined to the confessions of Babington and other conspirators, form a body of evidence, not indeed irresistibly convincing, but far stronger than we find in many instances where condemnation has ensued. And Hume has alleged sufficient reasons for believing its truth, derived from the great probability of her concurring in any scheme against her oppressor, from the certainty of her long correspondence with the conspirators, (who, I may add, had not made any difficulty of hinting to her their designs against the queen's life,[1]) and from the deep guilt that the falsehood of the charge must inevitably attach to sir Francis Walsingham.[2] Those at least who cannot acquit the queen of Scots of her husband's murder will hardly imagine that she would scruple to concur in a crime so much more susceptible of extenuation, and so much more essential to her interests. But as the proofs are not perhaps complete, we must hypothetically assume her guilt, in order to set this famous problem in the casuistry of public law upon its proper footing.

[1] In Murden's State Papers we have abundant evidence of Mary's acquaintance with the plots going forward in 1585 and 1586 against Elizabeth's government, if not with those for her assassination. But Thomas Morgan, one of the most active conspirators, writes to her, 9th July, 1586:—"There be some good members that attend opportunity to do the queen of England a piece of service, which I trust will quiet many things, if it shall please God to lay his assistance to the cause, for the which I pray daily." p. 530. In her answer to this letter, she does not advert to this hint, but mentions Babington as in correspondence with her. At her trial she denied all communication with him.

[2] It may probably be answered to this, that if the letter signed by Walsingham as well as Davison to sir Amias Paulet, urging him "to find out some way to shorten the life of the Scots queen," be genuine, which cannot perhaps be justly questioned (though it is so in the Biog. Brit. art. WALSINGHAM, note O.), it will be difficult to give him credit for any scrupulousness with respect to Mary. But, without entirely justifying this letter, it is proper to remark, what the Marian party choose to overlook, that it was written after the sentence, during the queen's odious scenes of grimace, when some might argue, though erroneously, that, a legal trial having passed, the formal method of putting the prisoner to death might, in so peculiar a case, be dispensed with. This was Elizabeth's own wish, in order to save her reputation, and enable her to throw the obloquy on her servants; which by Paulet's prudence and honour in refusing to obey her by privately murdering his prisoner, she was reduced to do in a very bungling and scandalous manner.

It has been said so often, that few perhaps wait to reflect whether it has been said with reason, that Mary, as an independent sovereign, was not amenable to any English jurisdiction. This, however, does not appear unquestionable. By one of those principles of law, which may be called natural, as forming the basis of a just and rational jurisprudence, every independent government is supreme within its own territory. Strangers, voluntarily resident within a state, owe a temporary allegiance to its sovereign, and are amenable to the jurisdiction of its tribunals; and this principle, which is perfectly conformable to natural law, has been extended by positive usage even to those who are detained in it by force. Instances have occurred very recently in England, when prisoners of war have suffered death for criminal offences; and if some have doubted the propriety of carrying such sentences into effect, where a penalty of unusual severity has been inflicted by our municipal law, few, I believe, would dispute the fitness of punishing a prisoner of war for wilful murder in such a manner as the general practice of civil societies, and the prevailing sentiments of mankind agree to point out. It is certainly true, that an exception to this rule, incorporated with the positive law of nations, and established, no doubt, before the age of Elizabeth, has rendered the ambassadors of sovereign princes exempt, in all ordinary cases at least, from criminal process. Whether, however, an ambassador may not be brought to punishment for such flagrant abuse of the confidence which is implied by receiving him, as a conspiracy against the life itself of the prince at whose court he resides, has been doubted by those writers who are most inclined to respect the privileges with which courtesy and convenience have invested him.[1] A sovereign, during a temporary residence in the territories of another, must of course possess as extensive an immunity as his representative, but that he might, in such circumstances, frame plots for the prince's assassination with impunity, seems to take for granted some principle that I do not apprehend.

But whatever be the privilege of inviolability attached to sovereigns, it must, on every rational ground, be confined to those who enjoy and exercise dominion in some independent territory. An abdicated or dethroned monarch may preserve his title by the courtesy of other states, but cannot rank with sovereigns in the tribunals where public law is administered. I should be rather surprised to hear any one assert that the parliament of Paris was incompetent to try Christina for the murder of Monaldeschi. And, though we must admit that Mary's resignation of her crown was compulsory, and retracted on the first occassion; yet after a twenty years' loss of possession, when not one of her former subjects avowed allegiance to her, when the king of Scotland had been so long acknowledged by England and all Europe,

[1] Questions were put to civilians by the queen's order in 1570, concerning the extent of Lesley, bishop of Ross's privileges, as Mary's ambassador. Murden Papers, p. 18. Somers, Tracts, i. 186. They answered, first, that an ambassador that raises rebellion against the prince to whom he is sent, by the law of nations, and the civil law of the Romans, has forfeited the privileges of an ambassador, and is liable to punishment: secondly, that if a prince be lawfully deposed from his public authority, and another substituted in his stead, the agent of such a prince cannot challenge the privileges of an ambassador; since none but absolute princes, and such as enjoy a royal prerogative, can constitute ambassadors. These questions are so far curious, that they show the jus gentium to have been already reckoned a matter of science, in which a particular class of lawyers was conversant.

is it possible to consider her as more than a titular queen, divested of every substantial right to which a sovereign tribunal could have regard? She was styled, accordingly, in the indictment, "Mary, daughter and heir of James the Fifth, late king of Scots, otherwise called Mary queen of Scots, dowager of France." We read even that some lawyers would have had her tried by a jury of the county of Stafford, rather than the special commission; which Elizabeth noticed as a strange indignity. The commission, however, was perfectly legal under the recent statute.[1]

But while we can hardly pronounce Mary's execution to have been so wholly iniquitous and unwarrantable as it has been represented, I admit that a more generous nature than that of Elizabeth would not have exacted the law's full penalty. Her detention in England was in violation of all natural, public, and municipal law; and if reasons of state policy or precedents from the custom of princes are allowed to extenuate this injustice, it is to be asked whether such reasons and such precedents might not palliate the crime of assassination imputed to the queen of Scots. Some might perhaps allege, as was so frequently urged at the time, that if her life could be taken with justice, it could not be spared in prudence; and that Elizabeth's higher duty to preserve her people from the risks of civil commotion must silence every feeling that could plead for mercy. Of this necessity different judgments may perhaps be formed; it is evident, that Mary's death extinguished the best hope of popery in England: but the relative force of the two religions was greatly changed since Norfolk's conspiracy; and it appears to me that an act of parliament explicitly cutting her off from the crown, and at the same time entailing it on her son, would have afforded a very reasonable prospect of securing the succession against all serious disturbance. But this neither suited the inclination of Elizabeth, nor of some among those who surrounded her.

As the catholics endured without any open murmuring the execution of her on whom their fond hopes had so long rested, so for the remainder of the queen's reign they by no means appear, when considered as a body, to have furnished any specious pretexts for severity. In that memorable year when the dark cloud gathered around our coasts, when Europe stood by in fearful suspense to behold what should be the result of that great cast in the game of human politics, what the craft of Rome, the power of Philip, the genius of Farnese could achieve against the island-queen with her Drakes and Cecils,—in that agony of the protestant faith and English name, they stood the trial of their spirits without swerving from their allegiance. It was then that the catholics in every county repaired to the standard of the lord-lieutenant, imploring that they might not be suspected of bartering the national independence for their religion itself. It was then that the venerable lord Montague brought a troop of horse to the queen at Tilbury, commanded by himself, his son, and grandson.[2] It would

[1] Strype, 360. 362. Civilians were consulted about the legality of trying Mary. Idem, Append. 138.

[2] Butler's English Catholics, i. 259.; Hume. This is strongly confirmed by a letter printed not long after, and republished in the Harleian Miscellany, vol. i. p. 142., with the name of Rae Leigh, a seminary priest, but probably the work of some protestant. He says, "for contributions of money, and for all other warlike actions, there was no difference between the

have been a sign of gratitude if the laws depriving them of the free exercise of their religion had been, if not repealed, yet suffered to sleep after these proofs of loyalty. But the execution of priests and of other catholics became on the contrary more frequent, and the fines for recusancy exacted as rigorously as before.[1] A statute was enacted, restraining popish recusants, a distinctive name now first imposed by law, to particular places of residence, and subjecting them to other vexatious provisions. (33 Eliz. c. 2.) All persons were forbidden, by proclamation, to harbour any of whose conformity they were not assured.[2] Some indulgence was doubtless shown during all Elizabeth's reign to particular persons, and it was not unusual to release priests from confinement; but such precarious and irregular connivance gave more scandal to the puritans than comfort to the opposite party.

The catholic martyrs under Elizabeth amount to no inconsiderable number. Dodd reckons them at 191; Milner has raised the list to 204. Fifteen of these, according to him, suffered for denying the queen's supremacy, 126 for exercising their ministry, and the rest for being reconciled to the Romish church. Many others died of hardships in prison, and many were deprived of their property.[3] There seems nevertheless to be good reason for doubting whether any one who was executed might not have saved his life by explicitly denying the pope's power to depose the queen. It was constantly maintained by her ministers, that no one had been executed for his religion. This would be an odious and hypocritical subterfuge, if it rested on the

catholic and the heretic. But in this case [of the Armada] to withstand the threatened conquest, yea, to defend the person of the queen, there appeared such a sympathy, concourse, and consent of all sorts of persons, without respect of religion, as they all appeared to be ready to fight against all strangers as it were with one heart and one body." Notwithstanding this, I am far from thinking that it would have been safe to place the catholics, generally speaking, in command. Sir William Stanley's recent treachery in giving Deventer to the Spaniards made it unreasonable for them to complain of exclusion from trust. Nor do I know that they did so. But trust and toleration are two different things. And even with respect to the former, I believe it far better to leave the matter in the hands of the executive government, which will not readily suffer itself to be betrayed, than to proscribe, as we have done, whole bodies by a legislative exclusion. Whenever, indeed, the government itself is not to be trusted, there arises a new condition of the problem.

[1] Strype, vols. iii. and iv. passim. Life of Whitgift, 401. 505. Murden, 667. Birch's Memoirs of Elizabeth; Lingard, &c. One hundred and ten catholics suffered death between 1588 and 1603. Lingard, 513.

[2] Camden, 566. Strype, iv. 56. This was the declaration of October, 1591, which Andreas Philopater answered. Ribadeneira also inveighs against it. According to them, its publication was delayed till after the death of Hatton, when the persecuting part of the queen's council gained the ascendency.

[3] Butler, 178. In Coke's famous speech in opening the case of the Powder-plot, he says, that not more than thirty priests and five receivers had been executed in the whole of the queen's reign, and for religion not any one. State Trials, ii. 179.

Dr. Lingard says of those who were executed between 1588, and the queen's death, "The butchery, with a few exceptions, was performed on the victim while he was in full possession of his senses." Vol. viii. p. 356. I should be glad to think that the few exceptions were the other way. Much would depend on the humanity of the sheriff, which one might hope to be stronger in an English gentleman than his zeal against popery. But I cannot help acknowledging, that there is reason to believe the disgusting cruelties of the legal sentence to have been frequently inflicted. In an anonymous memorial among lord Burleigh's papers, written about 1586, it is recommended that priests persisting in their treasonable opinion should be hanged, "and the manner of drawing and quartering forborne." Strype, iii. 620. This seems to imply, that it had been usually practised on the living. And lord Bacon, in his observations on a libel written against lord Burleigh in 1592, does not deny the "bowellings" of catholics; but makes a sort of apology for it, "less cruel than the wheel or forcipation, or even simple burning." Bacon's Works, vol. i. p. 534.

letter of these statutes, which adjudge the mere manifestation of a belief in the Roman catholic religion, under certain circumstances, to be an act of treason. But both lord Burleigh, in his Execution of Justice, and Walsingham in a letter published by Burnet,[1] positively assert the contrary; and I am not aware that their assertion has been disproved. This certainly furnishes a distinction between the persecution under Elizabeth, (which, unjust as it was in its operation, yet as far as it extended to capital inflictions, had in view the security of the government,) and that which the protestants had sustained in her sister's reign, springing from mere bigotry and vindictive rancour, and not even shielding itself at the time with those shallow pretexts of policy which it has of late been attempted to set up in its extenuation. But that which renders these condemnations of popish priests so iniquitous, is, that the belief in, or rather the refusal to disclaim, a speculative tenet, dangerous indeed and incompatible with loyalty, but not coupled with any overt act, was construed into treason; nor can any one affect to justify these sentences, who is not prepared to maintain that a refusal of the oath of abjuration, while the pretensions of the house of Stuart subsisted, might lawfully or justly have incurred the same penalty.[2]

An apology was always deduced for these measures, whether of restriction or punishment, adopted against all adherents to the Roman church, from the restless activity of that new militia which the Holy See had lately organised. The mendicant orders established in the thirteenth century had lent former popes a powerful aid towards subjecting both the laity and the secular priesthood, by their superior learning and ability, their emulous zeal, their systematic concert, their implicit obedience. But in all these requisites for good and faithful

[1] Burnet, ii. 418.

[2] "Though no papists were in this reign put to death purely on account of their religion, as numberless protestants had been in the woful days of queen Mary, yet many were executed for treason." Churton's Life of Nowell, p. 147. Thus it is, when the impulses of very strong partiality operate on a naturally obtuse understanding. Mr. Southey, whose abandonment of the oppressed side I sincerely regret, holds the same language: and a letter writer, Mr. Townshend, in his Accusations of History against the Church of Rome, has laboured to defend the capital, as well as other punishments of catholics under Elizabeth, on the same pretence of their treason.

Treason, by the law of England, and according to the common use of language, is the crime of rebellion or conspiracy against the government. If a statute is made, by which the celebration of certain religious rites is subjected to the same penalties as rebellion or conspiracy, would any man, free from prejudice, and not designing to impose upon the uninformed, speak of persons convicted on such a statute as guilty of treason, without expressing in what sense he uses the words, or deny that they were as truly punished for their religion, as if they had been convicted of heresy? A man is punished for religion, when he incurs a penalty for its profession or exercise, to which he was not liable on any other account. Lawyers are apt to be too rigidly technical; but I believe none would be found to argue like these ecclesiastics.

This is applicable to the great majority of capital convictions on this score under Elizabeth. The persons convicted could not be traitors in any fair sense of the word, because they were not charged with any thing properly denominated treason. It certainly appears that Campian and some other priests about the same time were indicted on the statute of Edward III. for compassing the queen's death, or intending to depose her. But the only evidence, so far as we know or have reason to suspect, that could be brought against them, was their own admission, at least by refusing to adjure it, of the pope's power to depose heretical princes. I suppose it is unnecessary to prove, that, without some overt act to show a design of acting upon this principle, it could not fall within the statute. These gentlemen to whom I allude will answer, probably, that they are not bound to know the law. Perhaps not; but are they bound to write books, wherein, for want of that knowledge, they advance the most untenable positions? If a man is to commit errors, let it at least not be in defence of oppression and inhumanity.

janissaries of the church, they were far excelled by the new order of Ignatius Loyola. Rome, I believe, found in their services what has stayed her fall. They contributed in a very material degree to check the tide of the reformation. Subtle alike and intrepid, pliant in their direction, unshaken in their aim, the sworn, implacable, unscrupulous enemies of protestant governments, the jesuits were a legitimate object of jealousy and restraint. As every member of that society enters into an engagement of absolute unhesitating obedience to its superior, no one could justly complain that he was presumed capable at least of committing any crimes that the policy of his monarch might enjoin. But if the jesuits by their abilities and busy spirit of intrigue promoted the interests of Rome, they raised up enemies by the same means to themselves within the bosom of the church; and became little less obnoxious to the secular clergy, and to a great proportion of the laity, than to the protestants whom they were commissioned to oppose. Their intermeddling character was shown in the very prisons occupied by catholic recusants, where a schism broke out between the two parties, and the secular priests loudly complained of their usurping associates.[1] This was manifestly connected with the great problem of allegiance to the queen, which the one side being always ready to pay, did not relish the sharp usage it endured on account of the other's disaffection. The council indeed gave some signs of attending to this distinction, by a proclamation issued in 1602, ordering all priests to depart from the kingdom, unless they should come in and acknowledge their allegiance, with whom the queen would take further order. (Rymer, xv. 473. 488.) Thirteen priests came forward on this with a declaration of allegiance as full as could be devised. Some of the more violent papists blamed them for this; and the Louvain divines concurred in the censure. (Butler's Engl. Catholics, p. 261.) There were now two parties among the English catholics; and those who, goaded by the sense of long persecution, and inflamed by obstinate bigotry, regarded every heretical government as unlawful or unworthy of obedience, used every machination to deter the rest from giving any test of their loyalty. These were the more busy, but by much the less numerous class; and their influence was mainly derived from the laws of severity, which they had braved or endured with fortitude. I am persuaded that if a fair and legal toleration, or even a general connivance at the exercise of their worship, had been conceded in the first part of Elizabeth's reign, she would have spared herself those perpetual terrors of rebellion which occupied all her later years. Rome would not indeed have been appeased, and some desperate fanatic might have sought her life: but the English catholics collectively would have repaid her protection by an attachment, which even her rigour seems not wholly to have prevented.

It is not to be imagined, that an entire unanimity prevailed in the

[1] Watson's Quodlibets. True relation of the faction begun at Wisbeach, 1601. These tracts contain rather an uninteresting account of the squabbles in Wisbeach castle among the prisoners, but cast heavy reproaches on the jesuits, as the "firebrands of all sedition, seeking by right or wrong simply or absolutely the monarchy of all England, enemies to all secular priests, and the causes of all the discord in the English nation." P. 74. I have seen several other pamphlets of the time relating to this difference. Some account of it may be found in Camden, 548., and Strype, iv. 194., as well as in the catholic historians, Dodd and Lingard.

councils of this reign as to the best mode of dealing with the adherents of Rome. Those temporary connivances or remissions of punishment, which, though to our present view they hardly lighten the shadows of this persecution, excited loud complaints from bigoted men, were due to the queen's personal humour, or the influence of some advisers more liberal than the rest. Elizabeth herself seems always to have inclined rather to indulgence than extreme severity. Sir Christopher Hatton, for some years her chief favourite, incurred odium for his lenity towards papists, and was, in their own opinion, secretly inclined to them.[1] Whitgift found enough to do with an opposite party. And that too noble and high-minded spirit, so ill fitted for a servile and dissembling court, the earl of Essex, was the consistent friend of religious liberty, whether the catholic or the puritan were to enjoy it. But those counsellors, on the other hand, who favoured the more precise reformers, and looked coldly on the established church, never failed to demonstrate their protestantism by excessive harshness towards the old religion's adherents. That bold bad man, whose favour is the great reproach of Elizabeth's reign, the earl of Leicester, and the sagacious, disinterested, inexorable Walsingham, were deemed the chief advisers of sanguinary punishments. But, after their deaths, the catholics were mortified to discover, that lord Burleigh, from whom they had hoped for more moderation, persisted in the same severities; contrary, I think, to the principles he had himself laid down in the paper from which I have above made some extracts. (Birch, i. 84.)

The restraints and penalties, by which civil governments have at various times thought it expedient to limit the religious liberties of their subjects, may be arranged in something like the following scale. The first and slightest degree is the requisition of a test of conformity to the established religion, as the condition of exercising offices of civil trust. The next step is to restrain the free promulgation of opinions, especially through the press. All prohibitions of the open exercise of religious worship appear to form a third and more severe class of restrictive laws. They become yet more rigorous, when they afford no indulgence to the most private and secret acts of devotion, or expressions of opinion. Finally, the last stage of persecution is to enforce by legal penalties a conformity to the established church, or an abjuration of heterodox tenets.

The first degree in this classification, or the exclusion of dissidents from trust and power, though it be always incumbent on those who maintain it to prove its necessity, may, under certain rare circumstances, be conducive to the political well-being of a state; and can then only be reckoned an encroachment on the principles of toleration, when it ceases to produce a public benefit sufficient to compensate for the privation it occasions to its objects. Such was the English test act in the interval between 1672 and 1688. But, in my judgment the instances which the history of mankind affords, where even these restrictions have been really consonant to the soundest policy, are by no means

[1] Ribadeneira says, that Hatton, "animo Catholicus, nihil perinde quam innocentem illorum sanguinem adeo crudeliter perfundi dolebat." He prevented Cecil from promulgating a more atrocious edict than any other, which was published after his death in 1591. De Schismate Anglic. c. 9. This must have been the proclamation of 29th Nov. 1591, forbidding all persons to harbour any one, of whose conformity they should not be well assured.

numerous. Cases may also be imagined, where the free discussion of controverted doctrines might, for a time at least, be subjected to some limitation for the sake of public tranquillity. I can scarcely conceive the necessity of restraining an open exercise of religious rites in any case except that of glaring immorality. In no possible case can it be justifiable for the temporal power to intermeddle with the private devotions or doctrines of any man. But least of all can it carry its inquisition into the heart's recesses, and bend the reluctant conscience to an insincere profession of truth, or extort from it an acknowledgment of error, for the purpose of inflicting punishment. The statutes of Elizabeth's reign comprehend every one of these progressive degrees of restraint and persecution. And it is much to be regretted, that any writers worthy of respect should, either through undue prejudice against an adverse religion, or through timid acquiescence in whatever has been enacted, have offered for this odious code the false pretext of political necessity. That necessity, I am persuaded, can never be made out: the statutes were, in many instances, absolutely unjust; in others, not demanded by circumstances; in almost all, prompted by religious bigotry, by excessive apprehension, or by the arbitrary spirit with which our government was administered under Elizabeth.

CHAPTER IV.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING PROTESTANT NONCONFORMISTS.

Origin of the Differences among the English Protestants—Religious Inclinations of the Queen—Unwillingness of many to comply with the established Ceremonies—Conformity enforced by the Archbishop—Against the Disposition of others—A more determined Opposition, about 1570, *led by Cartwright—Dangerous Nature of his Tenets—Puritans supported in the Commons—and in some Measure by the Council—Prophesyings—Archbishops Grindal and Whitgift—Conduct of the latter in enforcing Conformity—High Commission Court—Lord Burleigh averse to Severity—Puritan Libels—Attempt to set up a Presbyterian System—House of Commons averse to episcopal Authority—Independents liable to severe Laws—Hooker's Ecclesiastical Polity—Its Character—Spoliation of Church Revenues—General Remarks—Letter of Walsingham in Defence of the Queen's Government.*—pp. 130–169.

THE two statutes enacted in the first year of Elizabeth, commonly called the acts of supremacy and uniformity, are the main links of the Anglican church with the temporal constitution, and establish the subordination and dependency of the former; the first abrogating all jurisdiction and legislative power of ecclesiastical rulers, except under the authority of the crown; and the second prohibiting all changes of rites and discipline without the approbation of parliament. It was the constant policy of this queen to maintain her ecclesiastical prerogative

and the laws she had enacted. But in following up this principle she found herself involved in many troubles, and had to contend with a religious party quite opposite to the Romish, less dangerous indeed and inimical to her government, but full as vexatious and determined.

I have in another place slightly mentioned the differences that began to spring up under Edward VI. between the moderate reformers who established the new Anglican church, and those who accused them of proceeding with too much forbearance in casting off superstitions and abuses. These diversities of opinion were not without some relation to those which distinguished the two great families of protestantism in Europe. Luther, intent on his own system of dogmatic theology, had shown much indifference about retrenching exterior ceremonies, and had even favoured, especially in the first years of his preaching, that specious worship which some ardent reformers were eager to reduce to simplicity.[1] Crucifixes and images, tapers and priestly vestments, even for a time the elevation of the host and the Latin mass-book, continued in the Lutheran churches; while the disciples of Zuingle and Calvin were carefully eradicating them as popish idolatry and superstition. Cranmer and Ridley, the founders of the English Reformation, justly deeming themselves independent of any foreign master, adopted a middle course between the Lutheran and Calvinistic ritual. The general tendency, however of protestants, even in the reign of Edward VI., was towards the simpler forms; whether through the influence of those foreign divines who co-operated in our reformation, or because it was natural in the heat of religious animosity to recede as far as possible, especially in such exterior distinctions, from the opposite denomination. The death of Edward seems to have prevented a further approach to the scheme of Geneva in our ceremonies, and perhaps in our discipline. During the persecution of Mary's reign, the most eminent protestant clergymen took refuge in various cities of Germany and Switzerland. They were received by the Calvinists with hospitality and fraternal kindness; while the Lutheran divines, a narrow-minded intolerant faction, both neglected and insulted them. (Strype's Cranmer, 354.) Divisions soon arose among themselves about the use of the English service, in which a pretty considerable party was disposed to make alterations. The chief scene of these disturbances was Frankfort, where Knox, the famous reformer of Scotland, headed the innovators; while Cox, an eminent divine, much concerned in the establishment of Edward VI., and afterwards bishop of Ely, stood up for the original liturgy. Cox succeeded (not quite fairly, if we may rely on the only narrative we possess) in driving his opponents from the city; but these disagreements were by no means healed, when the accession of Elizabeth recalled both parties to their own country, neither of them very likely to display more mutual charity in their prosperous hour, than they had been able to exercise in a common persecution.[2]

[1] Sleidan, Hist. de la Réformation, par Courayer, ii. 74.

[2] These transactions have been perpetuated by a tract, entitled Discourse of the Troubles at Frankfort, first published in 1575, and reprinted in the well-known collection, Morgan's Phœnix Britannicus. It is fairly and temperately written, though with an avowed bias towards the puritan party. Whatever we read in any historian on the subject, is derived from this authority; but the refraction is of course very different through the pages of Collier and of Neal

The first mortification these exiles endured on their return was to find a more dilatory advance towards public reformation of religion, and more of what they deemed lukewarmness than their sanguine zeal had anticipated. Most part of this delay was owing to the greater prudence of the queen's counsellors, who felt the pulse of the nation before they ventured on such essential changes. But there was yet another obstacle, on which the reformers had not reckoned. Elizabeth, though resolute against submitting to the papal supremacy, was not so averse to all the tenets abjured by protestants, and loved also a more splendid worship than had prevailed in her brother's reign; while many of those returned from the continent were intent on copying a still simpler model. She reproved a divine who preached against the real presence, and is even said to have used prayers to the Virgin.[1] But her great struggle with the reformers was about images, and particularly the crucifix, which she retained, with lighted tapers before it, in her chapel; though in the injunctions to the ecclesiastical visiters of 1559, they are directed to have them taken away from churches.[2] This concession she must have made very reluctantly, for we find proofs the next year of her inclination to restore them; and the question of their lawfulness was debated, as Jewell writes word to Peter Martyr, by himself and Grindal on one side, against Parker and Cox, who had been persuaded to argue in their favour.[3] But the strenuous opposition of men so distinguished as Jewell, Sandys, and Grindal, of whom the first declared his intention of resigning his bishopric in case this return towards superstition should be made, compelled Elizabeth to relinquish her project.[4] The crucifix was even for a time removed from her own chapel, but replaced about 1570.[5]

There was, however one other subject of dispute between the old and new religions, upon which her majesty could not be brought to adopt the protestant side of the question. This was the marriage of the clergy, to which she expressed so great an aversion, that she would

[1] Strype ii. 1. There was a Lutheran party at the beginning of her reign, to which the queen may be said to have inclined, not altogether from religion, but from policy. Id. i. 53. Her situation was very hazardous; and in order to connect herself with sincere allies, she had thoughts of joining the Smalcaldic league of the German princes, whose bigotry would admit none but members of the Augsburg confession. Jewell's letters to Peter Martyr, in the appendix to Burnet's third volume, throw considerable light on the first two years of Elizabeth's reign; and show that famous prelate to have been what afterwards would have been called a precisian or puritan. He even approved a scruple Elizabeth entertained about her title of head of the church, as appertaining only to Christ. But the unreasonableness of the discontented party, and the natural tendency of a man who has joined the side of power to deal severely with those he has left, made him afterwards their enemy.

[2] Roods and relics accordingly were broken to pieces and burned throughout the kingdom, of which Collier makes loud complaint. This, Strype says, gave much offence to the catholics, and it was not the most obvious method of inducing them to conform.

[3] Burnet, iii. App., 290. Strype's Parker, 46.

[4] Quantum auguror, non scribam ad te posthac episcopus. Eo enim jam res pervenit, ut aut cruces argenteæ et stanneæ, quas nos ubique confregimus, restituendæ sint, aut episcopatus relinquendi. Burnet, 294. Sandys writes, that he had nearly been deprived for expressing himself warmly against images. Id. 296. Other proofs of the text may be found in the same collection, as well as in Strype's Annals, and his Life of Parker. Even Parker seems, on one occasion, to have expected the queen to make such a retrograde movement in religion, as would compel them all to disobey her. Life of Parker, App. 29.; a very remarkable letter.

[5] Strype's Parker, 310. The archbishop seems to disapprove this as inexpedient, but rather coldly; he was far from sharing the usual opinions on this subject. A puritan pamphleteer took the liberty to name the queen's chapel as "the pattern and precedent of all superstition" Strype's Annals, i. 471.

never consent to repeal the statute of her sister's reign against it. (Burnet, ii. 395.) Accordingly, the bishops and clergy, though they married by connivance, or rather by an ungracious permission,[1] saw, with very just dissatisfaction, their children treated by the law as the offspring of concubinage.[2] This continued, in legal strictness, till the first year of James, when the statute of Mary was explicitly repealed; though I cannot help suspecting, that clerical marriages had been tacitly recognised, even in courts of justice, long before that time. Yet it appears less probable to derive Elizabeth's prejudice in this respect from any deference to the Roman discipline, than from that strange dislike to the most lawful union between the sexes, which formed one of the singularities of her character.

Such a reluctance as the queen displayed to return in every point even to the system established under Edward, was no slight disappointment to those who thought that too little had been effected by it. They had beheld at Zurich and Geneva the simplest, and, as they conceived, the purest form of worship. They were persuaded that the vestments still worn by the clergy, as in the days of popery, though in themselves indifferent, led to erroneous notions among the people, and kept alive a recollection of former superstitions, which would render their return to them more easy in the event of another political revolution. (Burnet, iii. 305.) They disliked some other ceremonies for the same reason. These objections were by no means confined, as is perpetually insinuated, to a few discontented persons. Except archbishop Parker, who had remained in England during the late reign, and Cox, bishop of Ely, who had taken a strong part at Frankfort

[1] One of the injunctions to the visiters of 1559, reciting the offence and slander to the church that had arisen by lack of discreet and sober behaviour in many ministers, both in choosing of their wives, and in living with them, directs that no priest or deacon shall marry without the allowance of the bishops, and two justices of the peace, dwelling near the woman's abode, nor without the consent of her parents or kinsfolk, or for want of these, of her master or mistress, on pain of not being permitted to exercise the ministry, or hold any benefice; and that the marriages of bishops should be approved by the metropolitan, and also by commissioners appointed by the queen. Somers' Tracts, i. 65. Burnet, ii. 398. It is reasonable to suppose, that when a host of low-bred and illiterate priests were at once released from the obligation to celibacy, many of them would abuse their liberty improvidently, or even scandalously; and this probably had increased Elizabeth's prejudice against clerical matrimony. But I do not suppose that this injunction was ever much regarded. Some time afterwards (Aug. 1561) she put forth another extraordinary injunction, that no member of a college or cathedral should have his wife living within its precincts, under pain of forfeiting all his preferments. Cecil sent this to Parker, telling him at the same time that it was with great difficulty he had prevented the queen from altogether forbidding the marriage of priests. Life of P., 107. And the archbishop himself says, in the letter above mentioned, "I was in a horror to hear such words to come from her mild nature and Christianly learned conscience, as she spake concerning God's holy ordinance and institution of matrimony."

[2] Sandys writes to Parker, April 1559, "The queen's majesty will wink at it, but not stablish it by law, which is nothing else but to bastard our children." And decisive proofs are brought by Strype, that the marriages of the clergy were not held legal, in the first part at least of the queen's reign. Elizabeth herself, after having been sumptuously entertained by the archbishop at Lambeth, took leave of Mrs. Parker with the following courtesy: "*Madam* (the style of a married lady) I may not call you; *mistress* (the appellation at that time of an unmarried woman) I am loth to call you; but however, I thank you for your good cheer." This lady is styled, in deeds made while her husband was archbishop, *Parker*, alias *Harleston*; which was her maiden name. And she dying before her husband, her brother is called her heir-at-law, though she left children. But the archbishop procured letters of legitimation, in order to render them capable of inheritance. Life of Parker, p. 511. Others did the same. Annals, i. 8. Yet such were, I conceive, beyond the queen's power to grant, and could not have obtained any regard in a court of law.

In the diocese of Bangor it was usual for the clergy, some years after Elizabeth's accession, to pay the bishop for a licence to keep a concubine. Strype's Parker, 203.

against innovation, all the most eminent churchmen, such as Jewell, Grindal, Sandys, Nowell, were in favour of leaving off the surplice and what were called the popish ceremonies.[1] Whether their objections are to be deemed narrow and frivolous or otherwise, it is inconsistent with veracity to dissemble, that the queen alone was the cause of retaining those observances, to which the great separation from the Anglican establishment is ascribed. Had her influence been withdrawn, surplices and square caps would have lost their steadiest friend; and several other little accommodations to the prevalent dispositions of protestants would have taken place. Of this it seems impossible to doubt, when we read the proceedings of the convocation in 1562, when a proposition to abolish most of the usages deemed objectionable was lost only by a vote, the numbers being 59 to 58.[2]

In thus restraining the ardent zeal of reformation, Elizabeth may not have been guided merely by her own prejudices, without far higher motives of prudence and even of equity. It is difficult to pronounce in what proportion the two conflicting religions were blended on her coming to the throne. The reformed occupied most large towns, and were no doubt a more active and powerful body than their opponents. Nor did the ecclesiastical visiters of 1559 complain of any resistance, or even unwillingness, among the people.[3] Still the Romish party was extremely numerous: it comprehended the far greater portion of the beneficed clergy, and all those who, having no turn for controversy, clung with pious reverence to the rites and worship of their earliest associations. It might be thought perhaps not very repugnant to wisdom or to charity, that such persons should be won over to the reformed faith by retaining a few indifferent usages, which gratified their eyes, and took off the impression, so unpleasing to simple minds, of religious innovation. It might be urged, that should even somewhat more of superstition remain awhile than rational men would approve, the mischief would be far less than to drive the people back into the arms of popery, or to expose them to the natural consequences of

[1] Jewell's letters to Bullinger, in Burnet, are full of proofs of his dissatisfaction; and those who feel any doubts may easily satisfy themselves from the same collection, and from Strype, as to the others. The current opinion, that these scruples were imbibed during the banishment of our reformers, must be received with great allowance. The dislike to some parts of the Anglican ritual had begun at home; it had broken out at Frankfort; it is displayed in all the early documents of Elizabeth's reign by the English divines, far more warmly than by their Swiss correspondents. Grindal, when first named to the see of London, had his scruples about wearing the episcopal habits removed by Peter Martyr. Strype's Grindal, 29.

[2] It was proposed on this occasion to abolish all saints' days, to omit the cross in baptism, to leave kneeling at the communion to the ordinary's discretion, to take away organs, and one or two more of the ceremonies then chiefly in dispute. Burnet, iii. 303., and App. 319. Strype, i. 297, 299. Nowell voted in the minority. It can hardly be going too far to suppose that some of the majority were attached to the old religion.

[3] Jewell, one of these visiters, writes afterwards to Martyr, "Invenimus ubique animos multitudinis satis propensos ad religionem; ibi etiam, ubi omnia putabantur fore difficillima . . . Si quid erat obstinatæ malitiæ, id totum erat in presbyteris, illis præsertim, qui aliquando stetissent à nostrâ sententiâ." Burnet, iii. App. 289. The common people in London and elsewhere, Strype says, took an active part in demolishing images; the pleasure of destruction, I suppose, mingling with their abhorrence of idolatry. And during the conferences held in Westminster Abbey, Jan. 1559, between the catholic and protestant divines, the populace who had been admitted as spectators, testified such disapprobation of the former, that they made it a pretext of breaking off the argument. There was indeed such a tendency to anticipate the government in reformation, as necessitated a proclamation, Dec. 28. 1558, silencing preachers on both sides.

Mr. Butler says, from several circumstances it is evident that a great majority of the nation

destroying at once all old landmarks of reverence,—a dangerous fanaticism or a careless irreligion. I know not in what degree these considerations had weight with Elizabeth; but they were such as it well became her to entertain.

We live, however, too far from the period of her accession, to pass an unqualified decision on the course of policy which it was best for the queen to pursue. The difficulties of effecting a compromise between two intolerant and exclusive sects were perhaps insuperable. In maintaining or altering a religious establishment, it may be reckoned the general duty of governments to respect the wishes of the majority. But it is also a rule of human policy to favour the more efficient and determined, which may not always be the more numerous party. I am far from being convinced that it would not have been practicable, by receding a little from that uniformity which governors delight to prescribe, to have palliated in a great measure, if not put an end for a time, to the discontent that so soon endangered the new establishment. The frivolous usages, to which so many frivolous objections were raised, such as the tippet and surplice, the sign of the cross in baptism, the ring in matrimony, the posture of kneeling at the communion, might have been left to private discretion, not possibly without some inconvenience, but less, as I conceive, than resulted from rendering their observance indispensable. Nor should we allow ourselves to be turned aside by the common reply, that no concessions of this kind would have ultimately prevented the disunion of the church, upon more essential differences than the litigated ceremonies; since the science

then inclined to the Roman catholic religion. Mem. of Eng. Catholics, i. 146. But his proofs of this are very weak. The attachment he supposes to have existed in the laity towards their pastors may well be doubted; it could not be founded on the natural grounds of esteem; and if Rishton, the continuator of Sanders de Schismate, whom he quotes, says that one third of the nation was protestant, we may surely double the calculation of so determined a papist. As to the influences which Mr. B. alleges the court to have employed in elections for Elizabeth's first parliament, the argument would equally prove that the majority was protestant under Mary, since she had recourse to the same means. The whole tenor of historical documents in Elizabeth's reign proves that the catholics soon became a minority, and still more among the common people than the gentry. The north of England, where their strength lay, was in every respect the least important part of the kingdom. Even according to Dr. Lingard, who thinks fit to claim half the nation as catholic in the middle of this reign, the number of recusants certified to the council under 23 Eliz. c. 1., amounted only to 50,000, and, if we can trust the authority of other lists, they were much fewer before the accession of James. This writer, I may observe in passing, has, through haste and thoughtlessness, misstated a passage he cites from Murden's State Papers, p. 605., and confounded the persons suspected for religion in the city of London, about the time of the Armada, with the whole number of men fit for arms; thus making the former amount to 17,083.

Mr. Butler has taken up so paradoxical a notion on this subject, that he literally maintains the catholics to have been at least one half of the people at the epoch of the gunpowder plot. Vol. i. p. 295. We should be glad to know at what time he supposes the grand apostasy to have been consummated. Cardinal Bentivoglio gives a very different account; reckoning the real catholics, such as did not make profession of heresy, at only a thirtieth part of the whole; though he supposes that four fifths might become such, from secret inclination or general indifference, if it were once established. Opere di Bentivoglio, p. 83. edit. Paris, 1645. But I presume neither Mr. Butler nor Dr. Lingard would own these *adiaphorists*.

The latter writer, on the other hand, reckons the Hugonots of France, soon after 1560, at only one hundredth part of the nation, quoting for this Castelnau, an useful memoir writer, but no authority on a matter of calculation. The stern spirit of Coligni, *atrox animus Catonis*, rising above all misfortune, and unconquerable except by the darkest treachery, is sufficiently admirable without reducing his party to so miserable a fraction. The Calvinists at this time are reckoned by some at one fourth, but more frequently at one tenth, of the French nation. Even in the beginning of the next century, when proscription and massacre, lukewarmness and self-interest, had thinned their ranks, they are estimated by Bentivoglio (*ubi supra*) at one fifteenth.

of policy, like that of medicine, must content itself with devising remedies for immediate danger, and can at best only retard the progress of that intrinsic decay which seems to be the law of all things human, and through which every institution of man, like his earthly frame, must one day crumble into ruin.

The repugnance felt by a large part of the protestant clergy to the ceremonies with which Elizabeth would not consent to dispense, showed itself in irregular trangressions of the uniformity prescribed by statute. Some continued to wear the habits, others laid them aside; the communicants received the sacrament sitting, or standing, or kneeling, according to the minister's taste; some baptized in the font, others in a basin; some with the sign of the cross, others without it. The people in London and other towns, siding chiefly with the malecontents, insulted such of the clergy as observed the prescribed order.[1] Many of the bishops readily connived at deviations from ceremonies which they disapproved. Some, who felt little objection to their use, were against imposing them as necessary. (Strype's Parker, 157. 173.) And this opinion, which led to very momentous inferences, began so much to prevail, that we soon find the objections to conformity more grounded on the unlawfulness of compulsory regulations in the church prescribed by the civil power, than on any special impropriety in the usages themselves. But this principle, which perhaps the scrupulous party did not yet very fully avow, was altogether incompatible with the supremacy vested in the queen, of which fairest flower of her prerogative she was abundantly tenacious. One thing was evident, that the puritan malecontents were growing every day more numerous, more determined, and more likely to win over the generality of those who sincerely favoured the protestant cause. There were but two lines to be taken; either to relax and modify the regulations which gave offence, or to enforce a more punctual observation of them. It seems to me far more probable, that the former course would have prevented a great deal of that mischief which the second manifestly aggravated. For in this early stage the advocate of a simpler ritual had by no means assumed the shape of an embodied faction, whom concessions, it must be owned, are not apt to satisfy, but numbered the most learned and distinguished portion of the hierarchy. Parker stood nearly alone on the other side, but alone more than an equipoise in the balance, through his high station, his judgment in matters of policy, and his knowledge of the queen's disposition. He had possibly reason to apprehend that Elizabeth, irritated by the prevalent humour for alteration, might burst entirely away from the protestant side, or stretch her supremacy to reduce the church into a slavish subjection to her caprice.[2] This might induce a man of his sagacity, who took a far wider view of civil affairs than his brethren, to exert himself according to her peremptory command for universal conformity. But it is not easy to reconcile the whole of his conduct to this supposition; and in the copious memorials of Strype, we find the archbishop rather exciting

[1] Strype's Parker, 152, 153. Collier, 508. In the Lansdowne Collection, vol. viii. 47., is a letter from Parker, Apr. 1565, complaining of Turner, dean of Wells, for having made a man do penance for adultery in a square cap.

[2] This apprehension of Elizabeth's taking a disgust to protestantism is intimated in a letter of bishop Cox. Strype's Parker, 229.

the queen to rigorous measures against the puritans than standing in need of her admonition.[1]

The unsettled state of exterior religion which has been mentioned lasted till 1565. In the beginning of that year a determination was taken by the queen, or rather perhaps the archbishop, to put a stop to all irregularities in the public service. He set forth a book called Advertisements, containing orders and regulations for the discipline of the clergy. This modest title was taken in consequence of the queen's withholding her sanction of its appearance through Leicester's influence.[2] The primate's next step was to summon before the ecclesiastical commission Sampson, dean of Christchurch, and Humphrey, president of Magdalen college, Oxford, men of signal nonconformity, but at the same time of such eminent reputation, that when the law took its course against them, no other offender could hope for indulgence. On refusing to wear the customary habits, Sampson was deprived of his deanery; but the other seems to have been tolerated.[3] This instance of severity, as commonly happens, rather irritated than intimidated the puritan clergy, aware of their numbers, their popularity, and their powerful friends, but above all sustained by their own sincerity and earnestness. Parker had taken his resolution to proceed in the vigorous course he had begun. He obtained from the queen a proclamation, peremptorily requiring conformity in the use of the clerical vestments and other matters of discipline. The London ministers, summoned before himself and their bishop Grindal, who did not very willingly co-operate with his metropolitan, were called upon for a promise to comply with the legal ceremonies, which thirty-seven out of ninety-eight refused to make. They were in consequence suspended from their ministry, and their livings put in sequestration. But these unfortunately, as was the case in all this reign, were the most conspicuous, both for their general character and for their talent in preaching.[4]

Whatever deviations from uniformity existed within the pale of the Anglican church, no attempt had hitherto been made to form separate assemblies; nor could it be deemed necessary, while so much indulgence had been conceded to the scrupulous clergy. But they were now reduced to determine, whether the imposition of those rites they disliked would justify, or render necessary, an abandonment of their ministry. The bishops of that school had so far overcome their repugnance, as not only to observe the ceremonies of the church, but, in some instances, to employ compulsion towards others.[5] A more

[1] Parker sometimes declares himself willing to see some indulgence as to the habits and other matters; but the queen's commands being peremptory, he had thought it his duty to obey them, though forewarning her that the puritan ministers would not give way, 225. 227. This however is not consistent with other passages, where he appears to importune the queen to proceed. Her wavering conduct, partly owing to caprice, partly to insincerity, was naturally vexatious to a man of his firm and ardent temper. Possibly he might dissemble a little in writing to Cecil, who was against driving the puritans to extremities. But, on the review of his whole behaviour, he must be reckoned, and always has been reckoned, the most severe disciplinarian of Elizabeth's first hierarchy; though more violent men came afterwards.

[2] Strype's Annals, 416. Life of Parker, 159. Some years after, these advertisments obtained the queen's sanction, and got the name of Articles and Ordinances. Id. 160.

[3] Strype's Annals, 416, 430. Life of Parker. 184. Sampson had refused a bishopric on account of these ceremonies. Burnet, iii. 292.

[4] Life of Parker, 214. Strype says, p. 223., that the suspended ministers preached again after a little time by connivance.

[5] Jewell is said to have become strict in enforcing the use of the surplice. Annals, 421.

unexceptionable, because more disinterested, judgment, was pronounced by some of the Swiss reformers, to whom our own paid great respect—Beza, Gualter, and Bullinger; who while they regretted the continuance of a few superfluous rites, and still more the severity used towards good men, dissuaded their friends from deserting their vocation on that account. Several of the most respectable opponents of the ceremonies were equally adverse to any open schism.[1] But the animosities springing from heated zeal, and the smart of what seemed oppression, would not suffer the English puritans generally to acquiesce in such temperate counsels. They began to form separate conventicles in London, not ostentatiously indeed, but of course without the possibility of eluding notice. It was doubtless worthy of much consideration, whether an established church-government could wink at the systematic disregard of its discipline by those who were subject to its jurisdiction, and partook of its revenues. And yet there were many important considerations derived from the posture of religion and of the state, which might induce cool-headed men to doubt the expediency of too much straightening the reins. But there are few, I trust, who can hesitate to admit, that the puritan clergy, after being excluded from their benefices, might still claim from a just government a peaceful toleration of their particular worship. This it was vain to expect from the queen's arbitrary spirit, the imperious humour of Parker, and that total disregard of the rights of conscience, which was common to all parties in the sixteenth century. The first instance of actual punishment inflicted on protestant dissenters was in June, 1567, when a company of more than one hundred were seized during their religious exercises at Plummer's Hall, which they had hired on pretence of a wedding, and fourteen or fifteen of them were sent to prison.[2] They behaved on their examination with a rudeness as well as self-sufficiency, that had already begun to characterise the puritan faction. But this cannot excuse the fatal error of molesting men for the exercise of their own religion.

These coercive proceedings of the archbishop were feebly seconded, or directly thwarted, by most leading men both in church and state. Grindal and Sandys, successively bishops of London and archbishops of York, were naturally reckoned at this time somewhat favourable to the nonconforming ministers, whose scruples they had partaken. Parkhurst and Pilkington, bishops of Norwich and Durham, were openly on their side.[3] They had still more effectual support in the queen's council. The earl of Leicester, who possessed more power than any one to sway her wavering and capricious temper, the earls of

[1] Strype's Annals, i. 423. ii. 316. Life of Parker, 243. 348. Burnet, iii. 310. 325. 337. Bishops Grindal and Horn wrote to Zurich, saying plainly it was not their fault that the habits were not laid aside, with the cross in baptism, the use of organs, baptism by women, &c. p. 314. This last usage was much inveighed against by the Calvinists, because it involved a theological tenet differing from their own, as to the necessity of baptism. In Strype's Annals, 501., we have the form of an oath taken by all midwives, to exercise their calling without sorcery or superstition, and to baptise with the proper words. It was abolished by James I.

Beza was more dissatisfied than the Helvetic divines with the state of the English Church, Annals, i. 452. Collier, 503.; but dissuaded the puritans from separation, and advised them rather to comply with the ceremonies. Id. 511.

[2] Strypé's Life of Parker, 242. Life of Grindal, 114.

[3] Burnet, iii. 316. Strype's Parker, 155, et alibi.

Bedford, Huntingdon, and Warwick, regarded as the steadiest protestants among the aristocracy, the wise and grave lord keeper Bacon, the sagacious Walsingham, the experienced Sadler, the zealous Knollys, considered these objects of Parker's severity either as demanding a purer worship than had been established in the church, or at least as worthy by their virtues and services of more indulgent treatment.[1] Cecil himself, though on intimate terms with the archbishop and concurring generally in his measures, was not far removed from the latter way of thinking, if his natural caution and extreme dread at this juncture of losing the queen's favour had permitted him more unequivocally to express it. Those whose judgment did not incline them towards the puritan notions respected the scruples of men in whom the reformed religion could so implicitly confide. They had regard, also, to the condition of the church. The far greater part of its benefices were supplied by conformists of very doubtful sincerity, who would resume their mass-books with more alacrity than they had cast them aside.[2] Such a deficiency of protestant clergy had been experienced at the queen's accession, that for several years it was a common practice to appoint laymen, usually mechanics, to read the service in vacant churches.[3] These were not always wholly illiterate; or if they were, it was no more than might be said of the popish clergy, the vast majority of whom were destitute of all useful knowledge, and could read little Latin.[4] Of the two universities, Oxford had

[1] Id. 226. The church had but two or three friends, Strype says, in the council about 1572, of whom Cecil was the chief.

[2] Burnet says, on the authority of the visiter's reports, that out of 9400 beneficed clergymen, not more than about 200 refused to conform. This caused for some years just apprehensions of the danger into which religion was brought, by their retaining their affections to the old superstition: "so that," he proceeds, "if queen Elizabeth had not lived so long as she did, till all that generation was dead, and a new set of men better educated and principled were grown up and put in their rooms; and if a prince of another religion had succeeded before that time, they had probably turned about again to the old superstition as nimbly as they had done before in queen Mary's days." Vol. ii. p. 401. It would be easy to multiply testimonies out of Strype, to the papist inclinations of a great part of the clergy in the first part of this reign. They are said to have been sunk in superstition and looseness of living. Strype's Annals i. 166.

[3] Strype's Annals, 138. 177. Collier, 436. 465. This seems to show, that more churches were empty by the desertion of popish incumbents than the foregoing note would lead us to suppose. I believe that many went off to foreign parts from time to time, who had complied in 1559; and others were put out of their livings. The Roman catholic writers make out a longer list than Burnet's calculation allows.

It appears from an account sent in to the privy council by Parkhurst, bishop of Norwich, in 1562. that in his diocese more than one third of the benefices were vacant. Annals, i. 323. But in Ely, out of 152 cures, only 52 were served in 1560. L. of Parker, 72.

[4] Parker wrote in 1561 to the bishops of his province, enjoining them to send him certificates of the names and qualities of all their clergy; one column, in the form of certificate, was for learning: "And this," Strype says, "was commonly set down; Latinè aliqua verba intelligit Latinè utcunque intelligit, Latinè pauca intelligit," &c. Sometimes, however, we find doctus. L. of Parker, 95. But if the clergy could not read the language in which their very prayers were composed, what other learning or knowledge could they have? Certainly none; and even those who had gone far enough to study the school logic and divinity, do not deserve a much higher place than the wholly uninstructed. The Greek tongue was never *generally* taught in the universities or public schools till the reformation, and perhaps not so soon.

Since this note was written, a letter of Gibson has been published in Pepys' Memoirs, vol. ii. p. 154., mentioning a catalogue he had found of the clergy in the archdeaconry of Middlesex, A.D. 1563, with their qualifications annexed. Three only are described as docti Latinè et Græcè; twelve are called docti simply; nine, Latinè docti; thirty-one, Latinè mediocriter intelligentes: forty-two, Latinè perperam, utcunque aliquid, pauca verba, &c., intelligentes; seventeen are non docti or indocti. If this was the case in London, what can we think of more remote parts?

become so strongly attached to the Romish side during the late reign, that, after the desertion or expulsion of the most zealous of that party had almost emptied several colleges, it still for many years abounded with adherents to the old religion.[1] But at Cambridge, which had been equally popish at the queen's accession, the opposite faction soon acquired the ascendant. The younger students, imbibing ardently the new creed of ecclesiastical liberty, and excited by puritan sermons, began to throw off their surplices, and commit other breaches of discipline, from which it might be inferred, that the generation to come would not be less apt for innovation than the present.[2]

The first period in the history of puritanism includes the time from the queen's accession to 1570, during which the retention of superstitious ceremonies in the church had been the sole avowed ground of complaint. But when these obnoxious rites came to be enforced with unsparing rigour, and even those who voluntarily renounced the temporal advantages of the establishment were hunted from their private conventicles, they began to consider the national system of ecclesiastical regimen as itself in fault, and to transfer to the institution of episcopacy that dislike they felt for some of the prelates. The

[1] In the struggle made for popery at the queen's accession, the lower house of convocation sent up to the bishops five articles of faith, all strongly Roman catholic. These had previously been transmitted to the two universities, and returned with the hands of the greater part of the doctors to the first four. The fifth they scrupled, as trenching too much on the queen's temporal power. Burnet ii. 368. iii. 269.

Strype says, the universities were so addicted to popery, that for some years few educated in them were ordained. Life of Grindal, p. 50. And Wood's Antiquities of the University of Oxford contain many proofs of its attachment to the old religion. In Exeter College, as late as 1578, there were not above four protestants out of eighty, "all the rest secret or open Roman affectionaries." These chiefly came from the west "where popery greatly prevailed, and the gentry were bred up in that religion." Strype's Annals, ii. 539. But afterwards, Wood complains, "through the influence of Humphrey and Reynolds (the latter of whom became divinity lecturer on secretary Walsingham's foundation in 1586), the disposition of the times, and the long continuance of the earl of Leicester, the principal patron of the puritanical faction, in the place of chancellor of Oxford, the face of the university was so much altered, that there was little to be seen in it of the church of England, according to the principles and positions upon which it was first reformed." Hist. of Oxford, vol. ii. p. 228. Previously, however, to this change towards puritanism, the university had not been Anglican, but popish; which Wood liked much better than the first, and nearly as well as the second.

A letter from the university of Oxford to Elizabeth on her accession (Hearne's edition of Roper's Life of More, p. 273.) shows the Vicar-of-Bray character of these academics. They extol Mary as an excellent queen, but are consoled by the thought of her excellent successor. One sentence is curious: "Cum *patri, fratri, sorori*, nihil fuerit republicâ carius, *religione optatius*, verâ gloriâ dulcius; cum in hâc familiâ hæ laudes floruerint, vehementer confidimus, &c., quæ ejusdem stirpis sis, easdem cupidissime prosecuturam." It was a singular train of complaisance to praise Henry's, Edward's, and Mary's, religious sentiments in the same breath; but the queen might at least learn this from it, that whether she fixed on one of their creeds, or devised a new one for herself, she was sure of the acquiescence of this ancient and learned body. A preceding letter to cardinal Pole, in which the times of Henry and Edward are treated more cavalierly, seems by the style, which is very elegant, to have been the production of the same pen.

[2] The fellows and scholars of St. John's College, to the number of three hundred, threw off their hoods and surplices, in 1565, without any opposition from the master, till Cecil, as chancellor of the university, took up the matter, and insisted on their conformity to the established regulations. This gave much dissatisfaction to the university; not only the more intemperate party, but many heads of colleges and grave men, among whom we are rather surprised to find the name of Whitgift, interceding with their chancellor for some mitigation as to these unpalatable observances. Strype's Annals, i. 441. Life of Parker, 194. Cambridge had however her catholics, as Oxford had her puritans, of whom Dr. Caius, founder of the college that bears his name, was among the most remarkable. Id. 200. The chancellors of Oxford and Cambridge, Leicester and Cecil, kept a very strict hand over them, especially the latter, who seems to have acted as paramount visiter over every college, making them reverse any act which he disapproved. Strype, passim.

ostensible founder of this new school (though probably its tenets were by no means new to many of the sect) was Thomas Cartwright, the Lady Margaret's professor of divinity at Cambridge. He began, about 1570, to inculcate the unlawfulness of any form of church-government, except what the apostles had instituted, namely, the presbyterian. A deserved reputation for virtue, learning, and acuteness, an ardent zeal, an inflexible self-confidence, a vigorous, rude, and arrogant style, marked him as the formidable leader of a religious faction.[1] In 1572 he published his celebrated Admonition to the Parliament, calling on that assembly to reform the various abuses subsisting in the church. In this treatise, such a hardy spirit of innovation was displayed, and schemes of ecclesiastical policy so novel and extraordinary were developed, that it made a most important epoch in the contest, and rendered its termination far more improbable. The hour for liberal concessions had been suffered to pass away; the archbishop's intolerant temper had taught men to question the authority that oppressed them, till the battle was no longer to be fought for a tippet and a surplice, but for the whole ecclesiastical hierarchy, interwoven as it was with the temporal constitution of England.

It had been the first measure adopted in throwing off the yoke of Rome to invest the sovereign with an absolute control over the Anglican church; so that no part of its coercive discipline could be exercised but by his authority, nor any laws enacted for its governance without his sanction. This supremacy, indeed, both Henry VIII. and Edward VI. had carried so far, that the bishops were reduced almost to the rank of temporal officers, taking out commissions to rule their dioceses during the king's pleasure; and Cranmer had prostrated at the feet of Henry those spiritual functions which have usually been reckoned inherent in the order of clergy. Elizabeth took some pains to soften and almost explain away her supremacy, in order to conciliate the catholics; while, by means of the high commission court, established by statute in the first year of her reign, she was practically asserting it with no little despotism. But the avowed opponents of this prerogative were hitherto chiefly those who looked to Rome for another head of their church. The disciples of Cartwright now learned to claim an ecclesiastical independence, as unconstrained as the Romish priesthood in the darkest ages had usurped. "No civil magistrate in councils or assemblies for church matters," he says in his Admonition, "can either be chief-moderator, over-ruler, judge, or determiner; nor has he such authority as that, without his consent, it should not be lawful for ecclesiastical persons to make any church orders or ceremonies. Church matters ought ordinarily to be handled by church officers. The principal direction of them is by God's ordinance committed to the ministers of the church and to the ecclesiastical governors. As these meddle not with the making civil laws, so the civil magistrate ought not to ordain ceremonies, or determine controversies in the church, as long as they do not intrench upon his temporal authority. 'Tis the prince's province to protect and defend the councils of his clergy, to keep the peace, to see their decrees executed, and to punish

[1] Strype's Annals, i. 583. Life of Parker, 312. 347. Life of Whitgift, 27.

the contemners of them; but to exercise no spiritual jurisdiction."[1] "It must be remembered,"[2] he says, in another place, "that civil magistrates must govern the church according to the rules of God prescribed in his word, and that as they are nurses, so they be servants unto the church; and as they rule in the church, so they must remember to submit themselves unto the church, to submit their sceptres, to throw down their crowns before the church, yea, as the prophet speaketh, to lick the dust of the feet of the church."[3] It is difficult to believe that I am transcribing the words of a protestant writer; so much does this passage call to mind those tones of infatuated arrogance which had been heard from the lips of Gregory VII. and of those who trod in his footsteps.[3]

The strength of the protestant party had been derived, both in Germany and in England, far less from their superiority in argument, however decisive this might be, than from that desire which all classes, and especially the higher, had long experienced to emancipate themselves from the thraldom of ecclesiastical jurisdiction. For it is ever found, that men do not so much as give a hearing to novel systems in religion, till they have imbibed, from some cause or other, a secret distaste to that in which they have been educated. It was therefore rather alarming to such as had an acquaintance with ecclesiastical history, and knew the encroachments formerly made by the hierarchy throughout Europe, encroachments perfectly distinguishable from those of the Roman see, to perceive the same pretensions urged, and the same ambition and arrogance at work, which had imposed a yoke on the necks of their fathers. With whatever plausibility it might be maintained, that a connexion with temporal magistrates could only corrupt the purity and shackle the liberties of a Christian church, this argument was not for them to urge, who called on those magistrates to do the church's bidding, to enforce its decrees, to punish its refractory members; and while they disdained to accept the prince's co-operation as their ally, claimed his service as their minister. The protestant dissenters since the revolution, who have almost unanimously, and, I doubt not, sincerely, declared their averseness to any religious establishment especially as accompanied with coercive power, even in favour of their own sect, are by no means chargeable with these errors of the early puritans. But the scope of Cartwright's declaration was not to obtain a

[1] Cartwright's Admonition, quoted in Neal's Hist. of Puritans, i. 88.

[2] Madox's Vindication of Church of England against Neal, p. 122. This writer quotes several very extravagant passages from Cartwright, which go to prove irresistibly that he would have made no compromise short of the overthrow of the established church, p. 111, &c. "As to you, dear brethren," is said in a puritan tract of 1570, "whom God hath called into the brunt of the battle, the Lord keep you constant, that ye yield neither to toleration, neither to any other subtle persuasions of dispensations and licenses, which were to fortify their Romish practices; but, as you fight the Lord's fight, be valiant." Madox. p. 287.

[3] These principles had already been broached by those who called Calvin master; he had himself become a sort of prophet-king at Geneva. And Collier quotes passages from Knox's Second Blast, inconsistent with any government, except one slavishly subservient to the church. P. 444. The non-juring historian holds out the hand of fellowship to the puritans he abhors, when they preach up ecclesiastical independence. Collier liked the royal supremacy as little as Cartwright; and in giving an account of Bancroft's attack on the nonconformists for denying it, enters upon a long discussion in favour of an absolute emancipation from the control of laymen. P 610. He does not even approve the determination of the judges in Cawdrey's case (5 Coke's Reports), though against the nonconformists, as proceeding on a wrong principle of setting up the state above the church. P. 634.

toleration for dissent, not even by abolishing the whole ecclesiastical polity, to place the different professions of religion on an equal footing, but to substitute his own model of government, the one, exclusive, unappealable standard of obedience, with all the endowments, so far as is applicable to its frame, of the present church, and with all the support to its discipline that the civil power could afford.[1]

We are not however to conclude that every one, or even the majority of those who might be counted on the puritan side in Elizabeth's reign, would have subscribed to these extravagant sentences of Cartwright, or desired to take away the legal supremacy of the crown.[2] That party acquired strength by the prevailing hatred and dread of popery, and by the disgust which the bishops had been unfortunate enough to excite. If the language which I have quoted from the puritans breathed a spirit of ecclesiastical usurpation that might one day become dangerous, many were of opinion that a spirit not less mischievous in the present hierarchy, under the mask of the queen's authority, was actually manifesting itself in deeds of oppression. The upper ranks among the laity, setting aside courtiers, and such as took little interest in the dispute, were chiefly divided between those attached to the ancient church, and those who wished for further alterations in the new. I conceive the church of England party, that is, the party adverse to any species of ecclesiastical change, to have been the least numerous of the three during this reign; still excepting, as I have said, the neutrals, who commonly make a numerical majority, and are counted along with the dominant religion.[3] But by the act of the fifth of Elizabeth, Roman catholics were excluded from the house of commons; or, if some that way affected might occasionally creep into it, yet the terror of penal

[1] The school of Cartwright were as little disposed as the episcopalians to see the laity fatten on church property. Bancroft, in his famous sermon preached at Paul's Cross in 1558 (p. 24.) divides the puritans into the clergy factions and the lay factions. The former, he says, contend and lay it down in their supplication to parliament in 1585, that things once dedicated to a sacred use ought so to remain for ever, and not to be converted to any private use. The lay on the contrary, think it enough for the clergy to fare as the apostles did. Cartwright did not spare those who longed to pull down bishoprics for the sake of plundering them, and charged those who held impropriations with sin. Bancroft takes delight in quoting his bitter phrases from the Ecclesiastical Discipline.

[2] The old friends and protectors of our reformers at Zurich, Bullinger and Gualter, however they had favoured the principles of the first non-conformists, write in strong disapprobation of the innovators of 1574. Strype's Annals, ii. 316. And Fox, the martyrologist, a refuser to conform, speaks, in a remarkable letter quoted by Fuller in his Church History, p. 107., of factiosa illa Puritanorum capita, saying that he is totus ab iis alienus, and unwilling perbacchari in episcopos. The same is true of Bernard Gilpin, who disliked some of the ceremonies, and had subscribed the articles with a reservation, "so far as agreeable to the word of God;" but was wholly opposed to the new reform of church discipline. Carleton's Life of Gilpin, and Wordsworth's Ecclesiastical Biography, vol. iv. Neal has not reported the matter faithfully.

[3] "The puritan," says Persons the jesuit, in 1594, "is more generally favoured throughout the realm with all those which are not of the Roman religion than is the protestant, upon a certain general persuasion that his profession is the more perfect, especially in great towns, where preachers have made more impression in the artificers and burghers than in the country people. And among the protestants themselves all those that were less interested in ecclesiastical livings, or other preferments depending of the state, are more affected, commonly to the puritans, or easily are to be induced to pass that way for the same reason." Doleman's Conference about the next Succession to the Crown of England, p. 242. And again: "The puritan party at home, in England, is thought to be most rigorous of any other, that is to say, most ardent, quick, bold, resolute, and to have a great part of the best captains and soldiers on their side, which is a point of no small amount." P. 244. I do not quote these passages out of trust in father Persons, but because they coincide with much besides that has occurred to me in reading, and especially with the parliamentary proceedings of this reign. The following

laws impending over their heads would make them extremely cautious of betraying their sentiments. This contributed with the prevalent tone of public opinion, to throw such a weight into the puritanical scale in the commons, as it required all the queen's energy to counterbalance.

In the parliament that met in April 1571, a few days only after the commencement of the session, Mr. Strickland, "a grave and ancient man of great zeal," as the reporter styles him, began the attack by a long but apparently temperate speech on the abuses of the church, tending only to the retrenchment of a few superstitions in the liturgy, and to some reforms in the disposition of benefices. He proceeded to bring in a bill for the reformation of the common prayer, which was read a first time. Abuses in respect to benefices appear to have been a copious theme of scandal. The power of dispensation, which had occasioned so much clamour in former ages, instead of being abolished or even reduced into bounds at the Reformation, had been transferred entire from the pope to the king and archbishop. And, after the council of Trent had effected such considerable reforms in the catholic discipline, it seemed a sort of reproach to the protestant church of England, that she retained all the dispensations, the exemptions, the pluralities, which had been deemed the peculiar corruptions of the worst times of popery.[1] In the reign of Edward VI., as I have already mentioned, the canon law being naturally obnoxious from its origin and character, a commission was appointed to draw up a code of ecclesiastical laws. This was accordingly compiled, but never obtained the sanction of parliament; and though some attempts were made, and especially in the commons at this very time, to bring it again before the legislature, our ecclesiastical tribunals have been always compelled to borrow a great part of their principles from the canon law: one important consequence of which may be mentioned by way of illustration; that they are incompetent to grant a divorce from the bond of marriage in cases of adultery, as had been provided in the reformation of ecclesiastical laws compiled under Edward VI. A disorderly state of the church, arising partly from the want of any fixed rules of discipline, partly from the negligence of some bishops, and simony of others, but above all, from the rude state of manners and general ignorance of the clergy, is the common theme of complaint in this period, and aggravated the increasing disaffection towards the prelacy. A bill was brought into the commons to take away the granting of licences and

observation will confirm what may startle some readers; that the puritans, or at least those who rather favoured them, had a majority among the protestant gentry in the queen's days. It is agreed on all hands, and is quite manifest, that they predominated in the house of commons. But that house was composed, as it has ever been, of the principal landed proprietors, and as much represented the general wish of the community when it demanded a further reform in religious matters, as on any other subject. One would imagine, by the manner in which some express themselves, that the discontented were a small faction, who by some unaccountable means, in despite of the government and the nation, formed a majority of all parliaments under Elizabeth and her two successors.

[1] Burnet, iii. 335. Pluralities are still the great abuse of the church of England; and the rules on this head are so complicated and unreasonable that scarce any one can remember them. It would be difficult to prove, that with a view to the interests of religion among the people, or of the clergy themselves, taken as a body, any pluralities of benefices with cure of souls ought to remain, except of small contiguous parishes. But with a view to the interests of some hundred well connected ecclesiastics, the difficulty is none at all.

dispensations by the archbishop of Canterbury. But the queen's interference put a stop to this measure.[1]

The house of commons gave in this session a more forcible proof of its temper in ecclesiastical concerns. The articles of the English church, originally drawn up under Edward VI., after having undergone some alteration, were finally reduced to their present form by the convocation of 1562. But it seems to have been thought necessary that they should have the sanction of parliament in order to make them binding on the clergy. Of these articles the far greater portion relate to matters of faith, concerning which no difference of opinion had as yet appeared. Some few however declare the lawfulness of the established form of consecrating bishops and priests, the supremacy of the crown, and the power of the church to order rites and ceremonies. These involved the main questions at issue; and the puritan opposition was strong enough to withhold the approbation of the legislature from this part of the national symbol. The act of 13 Eliz. c. 12. accordingly enacts, that every priest or minister shall subscribe to all the articles of religion which *only* concern the confession of the true christian faith, and the doctrine of the sacraments, comprised in a book entitled "Articles whereupon it was agreed," etc. That the word *only* was inserted for the sake of excluding the articles which established church authority and the actual discipline, is evident from a remarkable conversation which Mr. Wentworth, the most distinguished asserter of civil liberty in this reign, relates himself in a subsequent session, that of 1575, to have held on the subject with archbishop Parker. "I was," he says, "among others, the last parliament sent for unto the archbishop of Canterbury, for the articles of religion that then passed this house. He asked us, 'Why we did put out of the book the articles for the homilies, consecration of bishops, and such like?' 'Surely, sir,' said I, 'because we were so occupied in other matters, that we had no time to examine them how they agreed with the word of God.' 'What!' said he, 'surely you mistake the matter; you will refer yourselves wholly to us therein!' 'No; by the faith I bear to God,' said I, 'we will pass nothing before we understand what it is; for that were but to make you popes: make you popes who list,' said I, 'for we will make you none.' And sure, Mr. Speaker, the speech seemed to me to be a pope-like speech, and I fear least our bishops do attribute this of the pope's canons unto themselves; Papa non potest errare."[2] The intrepid assertion of the right of private judgment on one side, and the pretension to something like infallibility on the other, which have been for more than two centuries since so incessantly repeated, are here curiously brought into contrast. As to the reservation itself, obliquely insinuated rather than expressed in this statute, it proved of little

[1] D'Ewes, p. 156. Parliamentary History, i. 733, &c.

[2] D'Ewes, p. 239. Parl. Hist. 790. Strype's Life of Parker, 394.
In a debate between cardinal Carvajal, and Rockisane, the famous Calixtin archbishop of Prague, at the council of Basle, the former said he would reduce the whole argument to two syllables; Crede. The latter replied he would do the same, and confine himself to two others; Proba. Lenfant makes a very just observation on this: "Si la gravité de l'histoire le permettoit, on diroit avec le comique; C'est tout comme ici. Il y a long tems que le premier de ces mots est le langage de ce qu'on appelle *l'Eglise*, et que le second est le langage de ce qu'on appelle *l'hérésie*." Concile de Basle, p. 193.

practical importance, the bishops having always exacted a subscription to the whole thirty-nine articles.[1]

It was not to be expected that the haughty spirit of Parker, which had refused to spare the honest scruples of Sampson and Coverdale, would abate of its rigour towards the daring paradoxes of Cartwright. His disciples, in truth, from dissatisfied subjects of the church, were become her downright rebels, with whom it was hardly practicable to make any compromise that would avoid a schism, except by sacrificing the splendour and jurisdiction of an established hierarchy. The archbishop continued, therefore, to harass the puritan ministers, suppressing their books, silencing them in churches, prosecuting them in private meetings. (Neal, 187. Strype's Parker, 325.) Sandys and Grindal, the moderate reformers of our spiritual aristocracy, not only withdrew their countenance from a party who aimed at improvement by subversion, but fell, according to the unhappy temper of their age, into courses of undue severity. Not merely the preachers, to whom, as regular ministers, the rules of canonical obedience might apply, but plain citizens, for listening to their sermons, were dragged before the high commission, and imprisoned upon any refusal to conform. (Neal, 210.) Strange that these prelates should not have remembered their own magnanimous readiness to encounter suffering for conscience sake in the days of Mary, or should have fondly arrogated to their particular church that elastic force of resolution, which disdains to acknowledge tyrannous power within the sanctuary of the soul, and belongs to the martyrs of every opinion, without attesting the truth of any![2]

The puritans meanwhile had not lost all their friends in the council, though it had become more difficult to protect them. One powerful reason undoubtedly operated on Walsingham and other ministers of Elizabeth's court against crushing their party; namely, the precariousness of the queen's life, and the unsettled prospects of succession. They had already seen, in the duke of Norfolk's conspiracy, that more than half the superior nobility had committed themselves to support the title of the queen of Scots. That title was sacred to all who professed the catholic religion, and respectable to a large proportion of the rest. But deeming, as they did, that queen a convicted adulteress and murderer, the determined enemy of their faith, and conscious that she could never forgive those who had counselled her detention and sought her death, it would have been unworthy of their prudence and magnanimity to have gone as sheep to the slaughter, and risked the destruction of protestantism under a second Mary, if the intrigues of ambitious men, the pusillanimity of the multitude, and the specious pretext of hereditary right, should favour her claims on a demise of the crown. They would have failed, perhaps in attempting to resist them; but upon resistance I make no question that they had resolved. In so

[1] Several ministers were deprived, in 1572, for refusing to subscribe the articles. Strype, ii. 136. Unless these were papists, which indeed is possible, their objection must have been to the articles touching discipline; for the puritans liked the rest very well.

[2] Parker wrote to lord Burleigh (June 1573), exciting the council to proceed against some of those men who had been called before the star-chamber. "He knew them," he said, "to be cowards"—a very great mistake—"and if they of the privy council gave over, they would hinder her majesty's government more than they were aware, and much abate the estimation of their own authorities," &c. Id. p. 421. Cartwright's Admonition was now prohibited to be sold. Ibid.

awful a crisis, to what could they better look than to the stern, intrepid, uncompromising spirit of puritanism; congenial to that of the Scottish reformers, by whose aid the lords of the congregation had overthrown the ancient religion in despite of the regent Mary of Guise? Of conforming churchmen, in general, they might well be doubtful, after the oscillations of the three preceding reigns; but every abhorrer of ceremonies, every rejecter of prelatical authority, might be trusted as protestant to the heart's core, whose sword would be as ready as his tongue to withstand idolatry. Nor had the puritans admitted, even in theory, those extravagant notions of passive obedience which the church of England had thought fit to mingle with her homilies. While the victory was yet so uncertain, while contingencies so incalculable might renew the struggle, all politic friends of the reformation would be anxious not to strengthen the enemy by disunion in their own camp. Thus sir Francis Walsingham, who had been against enforcing the obnoxious habits, used his influence with the scrupulous not to separate from the church on account of them; and again, when the schism had already ensued, thwarted, as far as his credit in the council extended, that harsh intolerance of the bishops which aggravated its mischiefs. (Strype's Annals, i. 433.)

We should reason in as confined a manner as the puritans themselves, by looking only at the captious frivolousness of their scruples, and treating their sect either as wholly contemptible, or as absolutely mischievous. We do injustice to these wise counsellors of the maiden queen, when we condemn, I do not mean on the maxims only of toleration, but of civil prudence, their unwillingness to crush the nonconforming clergy by an undeviating rigour. It may justly be said that, in a religious sense, it was a greater good to possess a well-instructed pious clergy, able to contend against popery, than it was an evil to let some prejudices against mere ceremonies gain a head. The old religion was by no means, for at least the first half of Elizabeth's reign, gone out of the minds of the people. The lurking priests had great advantages from the attractive nature of their faith, and some, no doubt, from its persecution. A middle system, like the Anglican, though it was more likely to produce exterior conformity, and for that reason was, I think, judiciously introduced at the outset, did not afford such a security against relapse, nor draw over the heart so thoroughly, as one which admitted of no compromise. Thus the sign of the cross in baptism, one of the principal topics of objection, may well seem in itself a very innocent and decorous ceremony. But if the perpetual use of that sign is one of the most striking superstitions in the church of Rome, it might be urged in behalf of the puritans, that the people were less likely to treat it with contempt, when they saw its continuance, even in one instance, so strictly insisted upon. I do not pretend to say that this reasoning is right, but that it is at least plausible, and that we must go back and place ourselves, as far as we can, in those times, before we determine upon the whole of this controversy in its manifold bearings. The great object of Elizabeth's ministers, it must be kept in mind, was the preservation of the protestant religion, to which all ceremonies o the church, and even its form of discipline, were subordinate. An indifferent passiveness among the people, a humble trust in authority,

however desirable in the eyes of churchmen, was not the temper which would have kept out the right heir from the throne, or quelled the generous ardour of the catholic gentry on the queen's decease.

A matter very much connected with the present subject will illustrate the different schemes of ecclesiastical policy, pursued by the two parties that divided Elizabeth's council. The clergy in several dioceses set up, with encouragement from their superiors, a certain religious exercise, called prophesyings. They met at appointed times to expound and discuss together particular texts of Scripture, under the presidency of a moderator, appointed by the bishop, who finished by repeating the substance of their debate with his own determination upon it. These discussions were in public; and it was contended that this sifting of the grounds of their faith, and habitual argumentation, would both tend to edify the people, very little acquainted as yet with their religion, and supply in some degree the deficiencies of learning among the pastors themselves. These deficiencies were indeed glaring; and it is not unlikely that the prophesyings might have had a salutary effect, if it had been possible to exclude the prevailing spirit of the age. It must however be evident to any one who has experience of mankind, that the precise clergy, armed not only with popular topics, but with an intrinsic superiority of learning and ability to support them, would wield these assemblies at their pleasure, whatever might be the regulations devised for their control. The queen entirely disliked them, and directed Parker to put them down. He wrote accordingly to Parkhurst, bishop of Norwich, for that purpose. The bishop was unwilling to comply. And some privy-councillors interfered by a letter, enjoining him not to hinder those exercises, so long as nothing contrary to the church was taught therein. This letter was signed by sir Thomas Smith, sir Walter Mildmay, bishop Sandys, and sir Francis Knollys. It was, in effect, to reverse what the archbishop had done. Parker, however, who was not easily daunted, wrote again to Parkhurst, that, understanding he had received instructions in opposition to the queen's orders and his own, he desired to be informed what they were. This seems to have checked the councillors; for we find that the prophesyings were now put down.[1]

Though many will be of opinion that Parker took a statesman-like view of the interests of the church of England in discouraging these exercises, they were generally regarded as so conducive to instruction that he seems to have stood almost alone in his opposition to them. Sandys's name appears to the above-mentioned letter of the council to Parkhurst. Cox, also, was inclined to favour the prophesyings. And Grindal, who in 1575 succeeded Parker in the see of Canterbury, bore the whole brunt of the queen's displeasure rather than obey her commands on this subject. He conceived that, by establishing strict rules with respect to the direction of those assemblies, the abuses which had already appeared of disorderly debate, and attacks on the discipline of the church, might be got rid of without entirely abolishing the exercise. The queen would hear of no middle course, and insisted both that the prophesyings should be discontinued, and that fewer licences for preaching should be granted. For no parish priest could without a licence

[1] Strype's Annals, ii. 219. 322. Life of Parker, 461.

preach any discourse except the regular homilies; and this was one of the points of contention with the puritans. Grindal steadily refused to comply with this injunction; and was in consequence sequestered from the exercise of his jurisdiction for the space of about five years, till, on his making a kind of submission, the sequestration was taken off not long before his death. The queen, by circular letters to the bishops, commanding them to put an end to the prophesyings, which were never afterwards renewed.[1]

Whitgift, bishop of Worcester, a person of a very opposite disposition, was promoted, on Grindal's decease, to the primacy. He had distinguished himself some years before by an answer to Cartwright's Admonition, written with much ability, but not falling short of the work it undertook to confute in rudeness and asperity.[2] It is seldom good policy to confer such eminent stations in the church on the gladiators of theological controversy; who from vanity and resentment, as well as the course of their studies, will always be prone to exaggerate the importance of the disputes wherein they have been engaged, and to turn whatever authority the laws or the influence of their place may give them against their adversaries. This was fully illustrated by the conduct of archbishop Whitgift, whose elevation the wisest of Elizabeth's counsellors had ample reason to regret. In a few months after his promotion, he gave an earnest of the rigour he had determined to adopt, by promulgating articles for the observance of discipline. One of these prohibited all preaching, reading, or catechising in private houses, whereto any not of the same family should resort, "seeing the same was never permitted as lawful under any christian magistrate." But that which excited the loudest complaints was the subscription to three points, the queen's supremacy, the lawfulness of the common prayer and ordination service, and the truth of the whole thirty-nine articles, exacted from every minister of the church. (Strype's Whitgift, 115.) These indeed were so far from novelties, that it might seem rather supererogatory to demand them, (if in fact the law required subscription to all the articles); yet it is highly probable that many had hitherto eluded the legal subscriptions, and that others had conceived their scruples after having conformed to the prescribed order. The archbishop's peremptory requisition passed, perhaps justly, for an illegal stretch of power.[3] It encountered the resistance of men pertinaciously attached to their own tenets, and ready to suffer the privations of poverty rather than yield a simulated obedience. To suffer however in silence has at no time been a virtue with our

[1] Strype's Life of Grindal, 219. 230. 272. The archbishop's letter to the queen, declaring his unwillingness to obey her requisition, is in a far bolder strain than the prelates were wont to use in this reign, and perhaps contributed to the severity she showed towards him. Grindal was a very honest, conscientious man, but too little of a courtier or statesman for the place he filled. He was on the point of resigning the archbishopric when he died; there had at one time been some thoughts of depriving him.

[2] Strype's Whitgift, 27. et alibi. He did not disdain to reflect on Cartwright for his poverty, the consequence of a scrupulous adherence to his principles. But the controversial writers of every side in the sixteenth century display a want of decency and humanity which even our anonymous libellers have hardly matched. Whitgift was not of much learning, if it be true, as the editors of the Biographia Britannica intimate, that he had no acquaintance with the Greek language. This must seem strange to those who have an exaggerated notion of the scholarship of that age.

[3] Neal, 266. Birch's Memoirs of Elizabeth, vol. i. p. 42. 47, &c.

protestant dissenters. The kingdom resounded with the clamour of those who were suspended or deprived of their benefices, and of their numerous abettors.[1] They appealed from the archbishop to the privy council. The gentry of Kent and other counties strongly interposed in their behalf. They had powerful friends at court, especially Knollys, who wrote a warm letter to the archbishop.[2] But, secure of the queen's support, who was now chiefly under the influence of sir Christopher Hatton, a decided enemy to the puritans, Whitgift relented not a jot of his resolution, and went far greater lengths than Parker had ever ventured, or perhaps had desired, to proceed.

The act of supremacy, while it restored all ecclesiastical jurisdiction to the crown, empowered the queen to execute it by commissioners appointed under the great seal, in such manner and for such time as she should direct; whose power should extend to visit, correct and amend all heresies, schisms, abuses, and offences whatever, which fall under the cognisance and are subject to the correction of spiritual authority. Several temporary commissions had sat under this act with continually augmented powers, before that appointed in 1583, wherein the jurisdiction of this anomalous court almost reached its zenith. It consisted of forty-four commissioners, twelve of whom were bishops, many more privy-councillors, and the rest either clergymen or civilians. This commission after reciting the acts of supremacy, uniformity, and two others, directs them to inquire from time to time, as well by the oaths of twelve good and lawful men, as by witnesses and all other means they can devise, of all offences, contempts, or misdemeanours done and committed contrary to the tenor of the said several acts and statutes; and also to inquire of all heretical opinions, seditious books, contempts, conspiracies, false rumours or talks, slanderous words and sayings, &c., contrary to the aforesaid laws. Power is given to any three commissioners, of whom one must be a bishop, to punish all persons absent from church, according to the act of uniformity, or to visit and reform heresies and schisms according to law; to deprive all beneficed persons holding any doctrine contrary to the thirty-nine articles; to punish incests, adulteries, and all offences of the kind; to examine all suspected persons on their oaths, and to punish all who should refuse to appear or to obey their orders, by spiritual censure or by discretionary fine or imprisonment; to alter and amend the statutes

According to a paper in the appendix to Strype's Life of Whitgift, p. 60., the number of conformable ministers in eleven dioceses, not including those of London and Norwich, the strongholds of puritanism, was 786, that of non-compliers, 49. But Neal says that 233 ministers were suspended in only six counties, 64 of whom in Norfolk, 60 in Suffolk, 38 in Essex, p. 268. The puritans formed so much the more learned and diligent part of the clergy, that a great scarcity of preachers was experienced throughout this reign, in consequence of silencing so many of the former. Thus in Cornwall, about 1578, out of 140 clergymen, not one was capable of preaching. Neal, p. 245. And, in general, the number of those who could not preach, but only read the service, was to the others nearly as four to one; the preachers being a majority only in London. Id. p. 320.

This may be deemed by some an instance of Neal's prejudice. But that historian is not so ill-informed as they suppose; and the fact is highly probable. Let it be remembered that there existed few books of divinity in English; that all books were, comparatively to the value of money, far dearer than at present; that the majority of the clergy were nearly illiterate, and many of them addicted to drunkenness and low vices; above all, that they had no means of supplying their deficiencies by preaching the discourses of others; and we shall see little cause for doubting Neal's statement, though founded on a puritan document.

[2] Life of Whitgift, 137. et alibi pluries. Annals, iii. 183.

of colleges, cathedrals, schools, and other foundations, and to tender the oath of supremacy, according to the act of parliament.[1]

Master of such tremendous machinery, the archbishop proceeded to call into action one of its powers contained for the first time in the present commission, by tendering what was technically styled the oath ex officio, to such of the clergy as were surmised to harbour a spirit of puritanical disaffection. This procedure, which was wholly founded on the canon law, consisted in a series of interrogations, so comprehensive as to embrace the whole scope of clerical uniformity, yet so precise and minute as to leave no room for evasion, to which the suspected party was bound to answer upon oath. (Strype's Whitgift, 135, and App. 49.) So repugnant was this to the rules of our English law, and to the principles of natural equity, that no species of ecclesiastical tyranny seems to have excited so much indignation. Lord Burleigh, who, though at first rather friendly to Whitgift, was soon disgusted by his intolerant and arbitrary behaviour, wrote in strong terms of remonstrance against these articles of examination, as "so curiously penned, so full of branches and circumstances, as he thought the inquisitors of Spain used not so many questions to comprehend and to trap their prey." The primate replied by alleging reasons in behalf of the mode of examination, but very frivolous, and such as a man determined to persevere in an unwarrantable course of action may commonly find. (Id. 157. 160.) They had little effect on the calm and sagacious mind of the treasurer, who continued to express his dissatisfaction, both individually and as one of the privy council.[2] But the extensive jurisdiction improvidently granted to the ecclesiastical commissioners, and which the queen was not at all likely to recall, placed Whitgift beyond the control of the temporal administration.

The archbishop, however, did not stand alone in this impracticable endeavour to overcome the stubborn sectaries by dint of hard usage. Several other bishops were engaged in the same uncharitable course (Neal, 325. 385.); but especially Aylmer of London, who has left a worse name in this respect than any prelate of Elizabeth's reign.[3] The violence of Aylmer's temper was not redeemed by many virtues; it is impossible to exonerate his character from the imputations of covetousness and of plundering the revenues of his see; faults very prevalent

[1] Neal, 274. Strype's Annals, iii. 180.

The germ of the high commission court seems to have been a commission granted by Mary (Feb. 1557) to certain bishops and others to inquire after all heresies, punish persons misbehaving at church, and such as refused to come thither, either by means of presentments by witness, or any other politic way they could devise; with full power to proceed as their discretions and consciences should direct them; and to use all such means as they could invent, for the searching of the premises, to call witnesses, and force them to make oath of such things as might discover what they sought after. Burnet, ii. 347. But the primary model was the inquisition itself.

It was questioned whether the power of deprivation for not reading the common prayer, granted to the high commissioners, were legal; the act of uniformity having annexed a much smaller penalty. But it was held by the judges in the case of Cawdrey, (5 Coke's Reports) that the act did not take away the ecclesiastical jurisdiction and supremacy which had ever appertained to the crown, and by virtue of which it might erect courts with as full spiritual jurisdiction as the archbishops and bishops exercised.

[2] Strype's Whitgift, 163. 166. et alibi. Birch's Memoirs, i. 62. There was said to be a scheme on foot, about 1590, to make all persons in office subscribe a declaration that episcopacy was lawful by the word of God, which Burleigh prevented.

[3] Id. 290. Strype's Life of Aylmer, p. 59, &c. His biographer is here, as in all his writings, too partial to condemn, but too honest to conceal.

among the bishops of that period. The privy council wrote sometimes to expostulate with Aylmer in a tone which could hardly have been employed towards a man in his station who had not forfeited the general esteem. Thus, upon occasion of one Benison, whom he had imprisoned without cause, we find a letter signed by Burleigh, Leicester, Walsingham, and even Hatton, besides several others, urging the bishop to give the man a sum of money, since he would recover damages at law, which might hurt his lordship's credit. Aylmer, however, who was of a stout disposition, especially when his purse was interested, objected strongly to this suggestion, offering rather to confer on Benison a small living, or to let him take his action at law. The result does not appear; but probably the bishop did not yield. (Neal, 294.) He had worse success in an information laid against him for felling his woods, which ended not only in an injunction, but a sharp reprimand from Cecil in the star-chamber.[1]

What lord Burleigh thought of these proceedings may be seen in the memorial to the queen on matters of religion and state, from which I have, in the last chapter, made an extract to show the tolerance of his disposition with respect to catholics. Protesting that he was not in the least addicted to the preciser sort of preachers, he declares himself "bold to think that the bishops, in these dangerous times, take a very ill and unadvised course in driving them from their cures;" first, because it must discredit the reputation of her majesty's power, when foreign princes should perceive that even among her protestant subjects, in whom consisted all her force, strength, and power, there was so great a heart-burning and division; and secondly, "because," he says, "though they were over squeamish and nice in their opinions, and more scrupulous than they need; yet with their careful catechising and diligent preaching, they bring forth that fruit which your most excellent majesty is to desire and wish; namely, the lessening and diminishing the papistical numbers." (Somers' Tracts, i. 166.) But this great minister's knowledge of the queen's temper, and excessive anxiety to retain her favour, made him sometimes fearful to act according to his own judgment. "It is well known," lord Bacon says of him, in a treatise published in 1591, "that as to her majesty, there was never a counsellor of his lordship's long continuance that was so applicable to her majesty's princely resolutions, endeavouring always after faithful propositions and remonstrances, and these in the best words and the most grateful manner, to rest upon such conclusions as her majesty in her own wisdom determineth, and them to execute to the best; so far hath he been from contestation, or drawing her majesty into any of his own courses." (Bacon's Works, i. 532.) Statesmen who betray this unfortunate infirmity of clinging too fondly to power become the slaves of the princes they serve. Burleigh used to complain of the

[1] Strype's Aylmer, 71. When he grew old, and reflected that a large sum of money would be due from his family, for dilapidations of the palace at Fulham, &c., he literally proposed to sell his bishopric to Bancroft. Id. 169. The other, however, waited for his death, and had above 4000*l.* awarded to him; but the crafty old man having laid out his money in land, this sum was never paid. Bancroft tried to get an act of parliament in order to render the real estate liable, but without success; page 194. The bishop's prejudice against standing timber gave rise to perhaps the worst pun that was ever remembered after two centuries. He had cut down an avenue of elm trees at Fulham, on which a wit remarked, that instead of Aylmer, (or Elmar, as the name was sometimes spelled), he should be called Mar-elm.

harshness with which the queen treated him. (Birch's Memoirs, ii. 146.) And though, more lucky than most of his class, he kept the white staff of treasurer down to his death, he was reduced in his latter years to court a rising favourite more submissively than became his own dignity.[1] From such a disposition we could not expect any decided resistance to those measures of severity towards the puritans, which fell in so entirely with Elizabeth's temper.

There is no middle course, in dealing with religious sectaries, between the persecution that exterminates, and the toleration that satisfies. They were wise in their generation, the Loaisas and Valdes of Spain, who kindled the fires of the inquisition, and quenched the rising spirit of protestantism in the blood of a Seso and a Cazalla. But sustained by the favouring voice of his associates, and still more by that firm persuasion which bigots never know how to appreciate in their adversaries, a puritan minister set at nought the vexatious and arrogant tribunal before which he was summoned. Exasperated, not overawed, the sectaries threw off what little respect they had hitherto paid to the hierarchy. They had learned, in the earlier controversies of the reformation, the use, or, more truly, the abuse, of that powerful lever of human bosoms, the press. He who in Saxony had sounded the first trumpet-peal against the battlements of Rome, had often turned aside from his graver labours to excite the rude passions of the populace by low ribaldry and exaggerated invective; nor had the English reformers ever scrupled to win proselytes by the same arts. What had been accounted holy zeal in the mitred Bale and martyred Latimer, might plead some apology from example in the aggrieved puritan. Pamphlets, chiefly anonymous, were rapidly circulated throughout the kingdom, inveighing against the prelacy. Of these libels the most famous went under the name of Martin Mar-prelate, a vizored knight of those lists, behind whose shield a host of sturdy puritans were supposed to fight. These were printed at a moveable press, shifted to different parts of the country as the pursuit grew hot, and contained little serious argument, but the unwarrantable invectives of angry men, who stuck at no calumny to blacken their enemies.[2] If these insults upon authority are apt sometimes to shock us even now, when long usage has rendered such licentiousness of seditious and profligate libellers almost our daily food, what must they have seemed in the reign of Elizabeth, when the press had no acknowledged liberty, and while the accustomed tone in addressing those in power was little better than servile adulation?

A law had been enacted some years before, levelled at the books dispersed by the seminary priests, which rendered the publication of seditious libels against the queen's government a capital felony. (23 Eliz.

[1] Birch's Memoirs, ii. 146. Burleigh does not shine much in these memoirs; but most of the letters they contain are from the two Bacons, then engaged in the Essex faction, though nephews of the treasurer.

[2] The first of Martin Mar-prelate's libels was published in 1588. In the month of November of that year the archbishop is directed by a letter from the council to search for and commit to prison the authors and printers. Strype's Whitgift, 288. These pamphlets are scarce; but a few extracts from them may be found in Strype, and other authors. The abusive language of the puritan pamphleteers had begun several years before. Strype's Annals, ii. 193. See the trial of Sir Richard Knightley of Northamptonshire for dispersing puritanical libels. State Trials. i. 1263.

c. 2.) This act, by one of those strained constructions which the judges were commonly ready to put upon any political crime, was brought to bear on some of the puritanical writings. The authors of Martin Mar-prelate could not be traced with certainty; but strong suspicions having fallen on one Penry, a young Welshman, he was tried some time after for another pamphlet, containing sharp reflections on the queen herself, and received sentence of death, which it was thought proper to carry into execution.[1] Udal, a puritan minister, fell into the grasp of the same statute for an alleged libel on the bishops, which had surely a very indirect reference to the queen's administration. His trial, like most other political trials of the age, disgraces the name of English justice. It consisted mainly in a pitiful attempt by the court to entrap him into a confession that the imputed libel was of his writing, as to which their proof was deficient. Though he avoided this snare, the jury did not fail to obey the directions they received to convict him. So far from being concerned in Martin's writings, Udal professed his disapprobation of them and his ignorance of the author. This sentence appeared too iniquitous to be executed even in the eyes of Whitgift, who interceded for his life; but he died of the effects of confinement.[2]

If the libellous pen of Martin Mar-prelate was a thorn to the rulers of the church, they had still more cause to take alarm at an overt measure of revolution which the discontented party began to effect about the year 1590. They set up, by common agreement, their own platform of government by synods and classes; the former being a sort of general assemblies, the latter held in the particular shires or dioceses, agreeably to the presbyterian model established in Scotland. In these meetings debates were had, and determinations usually made sufficiently unfavourable to the established system. The ministers composing them subscribed to the puritan book of discipline. These associations had been formed in several counties, but chiefly in those of Northampton and Warwick, under the direction of Cartwright, the legislator of their republic, who possessed, by the earl of Leicester's patronage,

[1] Penry's protestation at his death is in a style of the most affecting and simple eloquence. Life of Whitgift, 409. and Appendix, 176. It is a striking contrast to the coarse abuse for which he suffered. The authors of Martin Mar-prelate were never fully discovered; but Penry seems not to deny his concern in it.

[2] State Trials, 1271. It may be remarked on this as on other occasions, that Udal's trial is evidently published by himself; and a defendant, especially in a political proceeding, is apt to give a partial colour to his own case. Life of Whitgift, 314. Annals of Reformation, iv. 21. Fuller's Church History, 122. Neal, 340. This writer says: – "Among the divines who *suffered death* for the libels above mentioned, was the rev. Mr. Udal." This is no doubt a splenetic mode of speaking. But Warburton, in his short notes on Neal's history, treats it as a wilful and audacious attempt to impose on the reader; as if the ensuing pages did not let him into all the circumstances. I will here observe, that Warburton, in his self-conceit, has paid a much higher compliment to Neal than he intended, speaking of his own comments as "a full confutation (I quote from memory) of that historian's false facts and misrepresentations." But when we look at these, we find a good deal of wit and some pointed remarks, but hardly any thing that can be deemed a material correction of facts.

Neal's History of the Puritans is almost wholly compiled, as far as this reign is concerned, from Strype, and from a manuscript written by some puritan about the time. It was answered by Madox, afterwards bishop of Worcester, in a Vindication of the Church of England, published anonymously in 1733. Neal replied with tolerable success; but Madox's book is still an useful corrective. Both however were, like most controversialists, prejudiced men, loving the interests of their respective factions better than truth, and not very scrupulous about misrepresenting an adversary. But Neal had got rid of the intolerant spirit of the puritans, while Madox labours to justify every act of Whitgift and Parker

the mastership of an hospital in the latter town. (Life of Whitgift, 328.) It would be unjust to censure the archbishop for interfering to protect the discipline of his church against these innovators, had but the means adopted for that purpose been more consonant to equity. Cartwright with several of his sect were summoned before the ecclesiastical commission; where refusing to inculpate themselves by taking the oath ex officio, they were committed to the Fleet. This punishment not satisfying the rigid churchmen, and the authority of the ecclesiastical commission being incompetent to inflict any heavier judgment, it was thought fit the next year to remove the proceedings into the court of the star-chamber. The judges, on being consulted, gave it as their opinion, that since far less crimes had been punished by condemnation to the galleys or perpetual banishment, the latter would be the fittest for their offence. But several of the council had more tender regards to sincere though intractable men; and in the end they were admitted to bail upon a promise to be quiet, after answering some interrogations respecting the queen's supremacy, and other points, with civility and an evident wish to avoid offence.[1] It may be observed that Cartwright explicitly declared his disapprobation of the libels under the name of Martin Mar-prelate.[2] Every political party, however honourable may be its objects and character, is liable to be disgraced by the association of such unscrupulous zealots. But though it is an uncandid sophism to charge the leaders with the excesses they profess to disapprove in their followers, it must be confessed, that few chiefs of faction have had the virtue to condemn with sufficient energy the misrepresentations which are intended for their benefit.

It was imputed to the puritan faction, with more or less of truth, that, not content with the subversion of episcopacy and of the whole ecclesiastical polity established in the kingdom, they maintained principles that would essentially affect its civil institutions. Their denial, indeed, of the queen's supremacy, carried to such lengths as I have shown above, might justly be considered as a derogation of her temporal sovereignty. Many of them asserted the obligation of the judicial laws of Moses, at least in criminal cases; and deduced from this the duty of putting idolaters, (that is, papists,) adulterers, witches and demoniacs, sabbath-breakers, and several other classes of offenders, to death.[3] They claimed to their ecclesiastical assemblies the right of determining "all matters wherein breach of charity may be, and all matters of doctrine and manners, so far as appertaineth to conscience." They took away the temporal right of patronage to churches, leaving the choice of ministers to general suffrage.[4] There are even passages in Cartwright's Admonition, which intimate that the

[1] Life of Whitgift, 336. 360. 366. Append. 142. 159.

[2] Id. Append. 135. Annals, iv. 52.

[3] This predilection for the Mosaic polity was not uncommon among the reformers. Collier quotes passages from Martin Bucer as strong as could well be found in the puritan writings. P. 393.

[4] Life of Whitgift, p. 61. 333. and App. 138. Annals, iv. 140. As I have not seen the original works in which these tenets are said to be promulgated, I cannot vouch for the fairness of the representation made by hostile pens, though I conceive it to be not very far from the truth.

commonwealth ought to be fashioned after the model of the church.[1] But these it would not be candid to press against the more explicit declarations of all the puritans in favour of a limited monarchy, though they grounded its legitimacy on the republican principles of popular consent.[2] And with respect to the former opinions, they appear to have been by no means common to the whole puritan body; some of the deprived and imprisoned ministers even acknowledging the queen's supremacy in as full a manner as the law conferred it on her, and as she professed to claim it.[3]

The pretensions advanced by the school of Cartwright did not seem the less dangerous to those who cast their eyes upon what was passing in Scotland, where they received a practical illustration. In that kingdom, a form of polity very nearly conforming to the puritanical platform had become established at the reformation in 1560; except that the office of bishop or superintendent, still continued, but with no paramount, far less arbitrary dominion, and subject even to the provincial synod, much more to the general assembly of the Scottish Church. Even this very limited episcopacy was abolished in 1592. The presbyterian clergy, individually and collectively, displayed the intrepid, haughty, and untractable spirit of the English puritans. Though Elizabeth had from policy abetted the Scottish clergy in their attacks upon the civil administration, this connection itself had probably given her such an insight into their temper, as well as their influence, that she must have shuddered at the thought of seeing a republican assembly substituted for those faithful satraps, her bishops, so ready to do her bidding, and so patient under the hard usage she sometimes bestowed on them.

These prelates did not, however, obtain so much support from the house of commons as from their sovereign. In that assembly a determined band of puritans frequently carried the victory against the courtiers. Every session exhibited proofs of their dissatisfaction with the state of the church. The crown's influence would have been too weak without stretches of its prerogative. The commons in 1575 received a message forbidding them to meddle with religious concerns. For five years afterwards the queen did not convoke parliament, of which her dislike to their puritanical temper might in all probability be the chief reason. But, when they met again in 1580, the same topic of ecclesiastical grievances, which had by no means abated

1 Life of Whitgift. Madox's vindication of the Church of England against Neal, p. 212. Strype's Annals, iv. 142.

2 The large views of civil government entertained by the puritans were sometimes imputed to them as a crime by their more courtly adversaries, who reproached them with the writings of Buchanan and Languet. Life of Whitgift, 238. Annals, iv. 142.

3 See a declaration to this effect, at which no one could cavil, in Strype's Annals, iv. 85. The puritans, or at least some of their friends, retaliated this charge of denying the queen's supremacy on their adversaries. Sir Francis Knollys strongly opposed the claims of episcopacy as a divine institution, which had been covertly insinuated by Bancroft, on the ground of its incompatibility with the prerogative, and urged lord Burleigh to make the bishops acknowledge they had no superiority over the clergy, except by statute, as the only means to save her majesty from the extreme danger into which she was brought by the machinations of the pope and king of Spain. Life of Whitgift, p. 350. 361. 389. He wrote afterwards to lord Burleigh in 1591, that if he might not speak his mind freely against the power of the bishops, and prove it unlawful, by the laws of this realm, and not by the canon law, he hoped to be allowed to become a private man. This bold letter he desires to have shown to the queen Lansdowne Catalogue, vol. lxviii. 84.

during the interval, was revived. The commons appointed a committee, formed only of the principal officers of the crown who sat in the house, to confer with some of the bishops, according to the irregular and imperfect course of parliamentary proceedings in that age, "touching the griefs of this house for some things very requisite to be reformed in the church, as the great number of unlearned and unable ministers, the great abuse of excommunications for every matter of small moment, the commutation of penances, and the great multitude of dispensations and pluralities, and other things very hurtful to the church."[1] The committee reported that they found some of the bishops desirous of a remedy for the abuses they confessed, and of joining in a petition for that purpose to her majesty; which had accordingly been done, and a gracious answer, promising all convenient reformation, but laying the blame of remissness upon some prelates, had been received. This the house took with great thankfulness. It was exactly the course which pleased Elizabeth, who had no regard for her bishops, and a real anxiety that her ecclesiastical as well as temporal government should be well administered, provided her subjects would entrust the sole care of it to herself, or limit their interference to modest petitioning.

A new parliament having been assembled, soon after Whitgift on his elevation to the primacy had begun to enforce an universal conformity, the lower house drew up a petition in sixteen articles, to which they requested the lords' concurrence, complaining of the oath ex officio, the subscription to the three new articles, the abuses of excommunication, licences for non-residence, and other ecclesiastical grievances. The lords replied coolly, that they conceived many of those articles, which the commons had proposed, to be unnecessary, and that others of them were already provided for; and that the uniformity of the common prayer, the use of which the commons had requested to leave in certain respects to the minister's discretion, had been established by parliament. The two archbishops, Whitgift and Sandys, made a more particular answer to each article of the petition, in the name of their brethren.[2] But, in order to show some willingness towards reformation, they proposed themselves in convocation a few regulations for redress of abuses, none of which, however, on this occasion, though they received the royal assent, were submitted to the legislature (Strype's Annals, iii. 228.); the queen in fact maintaining an insuperable jealousy of all intermeddling on the part of parliament with her exclusive supremacy over the church. Excluded by Elizabeth's jealousy from entertaining these religious innovations, which would probably have met no unfavourable reception from a free parliament, the commons vented their ill-will towards the dominant hierarchy in complaints of ecclesiastical grievances, and measures to redress them; as to which, even with the low notions of parliamentary right prevailing at court, it was impossible to deny their competence. Several bills were introduced this session of 1584–5 into the lower house, which, though they had little chance of receiving the queen's assent, manifest the sense of that assembly, and in all likelihood of their constituents.

[1] D'Ewes, 302. Strype's Whitgift, 92. Appendix, 32.
[2] D'Ewes, 339. et post. Strype's Whitgift, 176, &c. Appendix, 70.

One of these imported, that bishops should be sworn in one of the courts of justice to do nothing in their office contrary to the common law. Another went to restrain pluralities, as to which the prelates would very reluctantly admit of any limitation.[1] A bill of the same nature passed the commons in 1589, though not without some opposition. The clergy took so great alarm at this measure, that the convocation addressed the queen in vehement language against it; and the archbishop throwing all the weight of his advice and authority into the same scale, the bill expired in the upper house.[2] A similar proposition in the session of 1601 seems to have miscarried in the commons. (Parl. Hist. 921.) In the next chapter will be found other instances of the commons' reforming temper in ecclesiastical concerns, and the queen's determined assertion of her supremacy.

The oath ex officio, binding the taker to answer all questions that should be put to him, inasmuch as it contravened the generous maxim of English law that no one is obliged to criminate himself, provoked very just animadversion. Morice, attorney of the court of wards, not only attacked its legality with arguments of no slight force, but introduced a bill to take it away. This was on the whole well received by the house; and sir Francis Knollys, the stanch enemy of episcopacy, though in high office, spoke in its favour. But the queen put a stop to the proceeding, and Morice lay some time in prison for his boldness. The civilians, of whom several sat in the lower house, defended a mode of procedure that had been borrowed from their own jurisprudence. This revived the ancient animosity between them and the common lawyers. The latter had always manifested a great jealousy of the spiritual jurisdiction, and had early learned to restrain its exorbitances by writs of prohibition from the temporal courts. Whitgift, as tenacious of power as the most ambitious of his predecessors, murmured like them at this subordination, for such it evidently was, to a lay tribunal.[3] But the judges, who found as much gratification in exerting their power as the bishops, paid little regard to the remonstrances of the latter. We find the law reports of this and the succeeding reign full of cases of prohibitions. Nor did other abuses imputed to these obnoxious judicatures, fail to provoke censure, such as the unreasonable fees of their officers, and the usage of granting licences, and commuting penances for money.[4] The ecclesiastical courts indeed have generally been reckoned more dilatory, vexatious, and expensive, than those of the common law. But in the present age that part of their jurisdiction, which, though coercive, is professedly spiritual, and wherein the greatest abuses have been alleged to exist, has gone very

[1] Strype's Annals, iii. 186. 192. Compare App. 35.

[2] Strype's Whitgift, 279. Annals, iii. 543.

[3] Strype's Whitgift, 521. 537. App. 136. The archbishop could not disguise his dislike to the lawyers. "The temporal lawyer," he says in a letter to Cecil, "*whose learning is no learning any where but here at home*, being born to nothing, doth by his labour and travail in that barbarous knowledge purchase to himself and his heirs for ever a thousand pounds per annum, and oftentimes much more, whereof there are at this day many examples." P. 215.

[4] Strype's Whitgift and D'Ewes, passim. In a convocation held during Grindal's sequestration (1580), proposals for reforming certain abuses in the spiritual courts were considered; but nothing was done in it. Strype's Grindal, p. 259. and App., p. 97. And in 1594, a commission to inquire into abuses in the spiritual courts was issued; but whether this were intended bonâ fide or not, it produced no reformation. Strype's Whitgift, 419.

much into disuse. In matrimonial and testamentary causes, their course of proceeding may not be open to any censure, so far as the essential administration of justice is concerned; though in the latter of these, a most inconvenient division of jurisdictions, following not only the unequal boundaries of episcopal dioceses, but the various peculiars or exempt districts, which the church of England has continued to retain, is productive of a good deal of trouble and needless expense.

Notwithstanding the tendency towards puritanism which the house of commons generally displayed, the court succeeded in procuring an act, which eventually pressed with very great severity upon that class. This passed in 1593, and enacted the penalty of imprisonment against any person above the age of sixteen, who should forbear for the space of a month to repair to some church, until he should make such open submission and declaration of conformity as the act appoints. Those who refused to submit to these conditions were to abjure the realm, and if they should return without the queen's licence, to suffer death as felons. (35 Eliz. c. 1. Parl. Hist. 863.) As this, on the one hand, like so many former statutes, helped to crush the unfortunate adherents to the Romish faith, so too did it bear an obvious application to such protestant sectaries as had professedly separated from the Anglican church. But it is here worthy of remark, that the puritan ministers throughout this reign disclaimed the imputation of schism, and acknowledged the lawfulness of continuing in the established church, while they demanded a further reformation of her discipline.[1] The real separatists, who were also a numerous body, were denominated Brownists or Barrowists, from the names of their founders, afterwards lost in the more general appellation of Independents. These went far beyond the puritans in their aversion to the legal ministry, and were deemed in consequence still more proper subjects for persecution. Multitudes of them fled to Holland from the rigour of the bishops in enforcing this statute. (Neal, 253, 386.) But two of this persuasion, Barrow and Greenwood, experienced a still severer fate. They were indicted on that perilous law of the 23d of the queen, mentioned in the last chapter, for spreading seditious writings, and executed at Bury. They died, Neal tells us, with such expressions of piety and loyalty, that Elizabeth regretted the consent she had given to their deaths.[2]

[1] Neal asserts in his summary of the controversy, as it stood in this reign, that the puritans did not object to the office of bishop, provided he was only the head of the presbyter, and acted in conjunction with them, p. 398. But this was in effect to demand every thing. For if the office could be so far lowered in eminence, there were many waiting to clip the temporal revenues and dignity in proportion.

In another passage, Neal states clearly, if not quite fairly, the main points of difference between the church and non-conforming parties under Elizabeth. p. 147. He concludes with the following remark, which is very true. "Both parties agreed too well in asserting the necessity of an uniformity of public worship, and of calling in the sword of the magistrate for the support and defence of the several principles, which they made an ill use of in their turns, as they could grasp the power into their hands. The standard of uniformity, according to the bishops, was the queen's supremacy and the laws of the land; according to the puritans, the decrees of provincial and national synods, allowed and enforced by the civil magistrate; but neither party were for admitting that liberty of conscience and freedom of profession which is every man's right, as far as is consistent with the peace of the government he lives under."

[2] Strype's Whitgift, 414. Neal, 373. Several years before, in 1583, two men called anabaptists, Thacker and Copping, were hanged at the same place on the same statute for denying the queen's ecclesiastical supremacy; the proof of which was their dispersion of Brown's tracts

But, while these scenes of pride and persecution on one hand, and of sectarian insolence on the other, were deforming the bosom of the English church, she found a defender of her institutions in one who mingled in these vulgar controversies like a knight of romance among caitiff brawlers, with arms of finer temper and worthy to be proved in a nobler field. Richard Hooker, master of the Temple, published the first four books of his Ecclesiastical Polity in 1594; the fifth three years afterwards; and dying in 1600, left behind three which did not see the light till 1647. This eminent work may justly be reckoned to mark an era in our literature: for if passages of much good sense and even of a vigorous eloquence are scattered in several earlier writers in prose, yet none of these, except perhaps Latimer and Ascham, and Sir Philip Sidney in his Arcadia, can be said to have acquired enough reputation to be generally known even by name, much less are read in the present day; and it is indeed not a little remarkable that England, until near the end of the sixteenth century, had given few proofs in literature of that intellectual power which was about to develope itself with such unmatchable energy in Shakspeare and Bacon. We cannot indeed place Hooker (but whom dare we to place?) by the side of these master-spirits; yet he has abundant claims to be counted among the luminaries of English literature. He not only opened the mine, but explored the depths of our native eloquence. So stately and graceful is the march of his periods, so various the fall of his musical cadences upon the ear, so rich in images, so condensed in sentences, so grave and noble his diction, so little is there of vulgarity in his racy idiom, of pedantry in his learned phrase, that I know not whether any later writer has more admirably displayed the capacities of our language, or produced passages more worthy of comparison with the splendid monuments of antiquity. If we compare the first book of Ecclesiastical Polity with what bears perhaps most resemblance to it of any thing extant, the treatise of Cicero de Legibus, it will appear somewhat perhaps inferior, through the imperfection of our language, which, with all its force and dignity, does not equal the Latin in either of these qualities, and is certainly more tedious and diffuse in some of its reasonings, but by no means less high toned in sentiment, or less bright in fancy, and far more comprehensive and profound in the foundations of its philosophy.

The advocates of a presbyterian church had always thought it sufficient to prove that it was conformable to the apostolical scheme as deduced merely from the scriptures. A pious reverence for the sacred writings, which they made almost their exclusive study, had degenerated into very narrow views on the great themes of natural religion and the moral law, as deducible from reason and sentiment. These, as most of the various families of their descendants continue to do, they greatly slighted, or even treated as the mere chimeras of heathen philosophy. If they looked to the Mosaic law as the standard of criminal jurisprudence, if they sought precedents from scripture for

wherein that was only owned in civil cases. Strype's Annals, iii. 186. This was according to the invariable practice of Tudor times: an oppressive and sanguinary statute was first made; and next, as occasion might serve, a construction was put on it contrary to all common sense, in order to take away men's lives.

all matters of temporal policy, much more would they deem the practice of the apostles an unerring and immutable rule for the discipline of the Christian church.[1] To encounter these adversaries, Hooker took a far more original course than the ordinary controvertists, who fought their battle with conflicting interpretations of scriptural texts or passages from the fathers. He inquired into the nature and foundation of law itself, as the rule of operation to all created beings, yielding thereto obedience by unconscious necessity, or sensitive appetite, or reasonable choice; reviewing especially those laws that regulate human agency, as they arise out of moral relations, common to our species, or the institutions of politic societies, or the intercommunity of independent nations; and having thoroughly established the fundamental distinction between laws natural and positive, eternal and temporary, immutable and variable, he came with all this strength of moral philosophy to discriminate by the same criterion the various rules and precepts contained in the scriptures. It was a kind of maxim among the puritans, that scripture was so much the exclusive rule of human actions, that whatever, in matters at least concerning religion, could not be found to have its authority, was unlawful. Hooker devoted the whole second book of his work to the refutation of this principle. He proceeded afterwards to attack its application more particularly to the episcopal scheme of church government, and to the various ceremonies or usages which those sectaries treated as either absolutely superstitious, or at least as impositions without authority. It was maintained by this great writer, not only that ritual observances are variable according to the discretion of ecclesiastical rulers, but that no certain form of polity is set down in scripture as generally indispensable for a Christian church. Far, however, from conceding to his antagonists the fact which they assumed, he contended for episcopacy, as an apostolical institution, and always preferable, when circumstances would allow its preservation, to the more democratical model of the Calvinistic congregations. "If we did seek," he says, "to maintain that which most advantageth our own cause, the very best way for us and the strongest against them were to hold, even as they do, that in scripture there must needs be found some particular form of church polity which God hath instituted, and which for that very cause belongeth to all churches at all times. But with any such partial eye to respect ourselves, and by cunning to make those things seem the truest, which are the fittest to serve our purpose, is a thing which we neither like nor mean to follow."

The richness of Hooker's eloquence is chiefly displayed in his first book; beyond which, perhaps, few who want a taste for ecclesiastical reading are likely to proceed. The second and third, however, though less brilliant, are not inferior in the force and comprehensiveness of reasoning. The eighth and last returns to the subject of civil govern-

[1] "The discipline of Christ's church," said Cartwright, "that is necessary for all times, is delivered by Christ, and set down in the Holy Scriptures. Therefore the true and lawful discipline is to be fetched from thence, and from thence alone. And that which resteth upon any other foundation ought to be esteemed unlawful and counterfeit." Whitgift, in his answer to Cartwright's admonition, rested the controversy in the main, as Hooker did, on the indifferency of church discipline and ceremony. It was not till afterwards that the defenders of the established order found out that one claim of divine right was best met by another.

ment, and expands, with remarkable liberality, the principles he had laid down as to its nature in the first book. Those that intervene are mostly confined to a more minute discussion of the questions mooted between the church and puritans; and in these as far as I have looked into them, though Hooker's argument is always vigorous and logical, and he seems to be exempt from that abusive insolence to which polemical writers were then even more prone than at present, yet he has not altogether the terseness or lucidity which long habits of literary warfare, and perhaps a natural turn of mind, have given to some expert dialecticians. In respect of language, the three posthumous books, partly from having never received the author's last touches, and partly, perhaps, from his weariness of the labour, are beyond comparison less elegantly written than the preceding.

The better parts of the Ecclesiastical Polity bear a resemblance to the philosophical writings of antiquity, in their defects as well as their excellencies. Hooker is often too vague in the use of general terms, too inconsiderate in the admission of principles, too apt to acquiesce in the scholastic pseudo-philosophy, and indeed in all received tenets; he is comprehensive rather than sagacious, and more fitted to sift the truth from the stores of accumulated learning than to seize it by an original impulse of his own mind; somewhat also impeded, like many other great men of that and the succeeding century, by too much acquaintance with books, and too much deference for their authors. It may be justly objected to some passages, that they elevate ecclesiastical authority, even in matters of belief, with an exaggeration not easily reconciled to the protestant right of private judgment, and even of dangerous consequence in those times; as when he inclines to give a decisive voice in theological controversies to general councils; not indeed on the principles of the church of Rome, but on such as must end in the same conclusion, the high probability that the aggregate judgment of many grave and learned men should be well founded.[1] Nor would it be difficult to point out several other subjects, such as religious toleration, as to which he did not emancipate himself from the trammels of prejudice. But, whatever may be the imperfections of his Ecclesiastical Polity, they are far more than compensated by its eloquence and its reasoning, and above all by that deep pervading sense of the relation between man and his Creator, as the groundwork of all eternal law, which rendered the first book of this work a rampart, on the one hand against the puritan school who shunned the light of

[1] "If the natural strength of men's wit may by experience and study attain unto such ripeness in the knowledge of things human, that men in this respect may presume to build somewhat upon their judgment; what reason have we to think but that even in matters divine, the like wits furnished with necessary helps, exercised in scripture with like diligence, and assisted with the grace of Almighty God, may grow unto so much perfection of knowledge, that men shall have just cause, when any thing pertinent unto faith and religion is doubted of, the more willingly to incline their minds towards that which the sentence of so grave, wise, and learned in that faculty shall judge most sound? For the controversy is of the weight of such men's judgment," &c. But Hooker's mistake was to exaggerate the weight of such men's judgment, and not to allow enough for their passions and infirmities, the imperfection of their knowledge, their connivance with power, their attachment to names and persons, and all the other drawbacks to ecclesiastical authority.

It is well known that the preface to the Ecclesiastical Polity was one of the two books to which James II. ascribed his return into the fold of Rome; and it is not difficult to perceive by what course of reasoning on the positions it contains this was effected.

nature as a deceitful meteor; and on the other, against that immoral philosophy which, displayed in the dark precepts of Machiavel, or lurking in the desultory sallies of Montaigne, and not always rejected by writers of more apparent aspect, threatened to destroy the sense of intrinsic distinctions in the quality of actions, and to convert the maxims of state-craft and dissembling policy into the rule of life and manners.

Nothing perhaps is more striking to a reader of the Ecclesiastical Polity than the constant and even excessive predilection of Hooker for those liberal principles of civil government, which are sometimes so just and always so attractive. Upon these subjects, his theory absolutely coincides with that of Locke. The origin of government, both in right and in fact, he explicitly derives from a primary contract; "without which consent, there was no reason that one should take upon him to be lord or judge over another; because, although there be, according to the opinion of some very great and judicious men, a kind of natural right in the noble, wise, and virtuous, to govern them which are of servile disposition; nevertheless, for manifestation of this their right, and men's more peaceable contentment on both sides, the assent of them who are to be governed seemeth necessary." "The lawful power," he observes elsewhere, "of making laws to command whole politic societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority received at first from their consent upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not therefore, which public approbation hath not made so. But approbation not only they give, who personally declare their assent by voice, sign, or act; but also when others do it in their names, by right originally, at the least, derived from them. As in parliaments, councils, and the like assemblies, although we be not personally ourselves present, notwithstanding our assent is by reason of other agents there in our behalf. And what we do by others, no reason but that it should stand as our deed, no less effectually to bind us, than if ourselves had done it in person." And in another place still more peremptorily: "Of this thing no man doubteth, namely, that in all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents ratified. Against all equity it were, that a man should suffer detriment at the hands of men, for not observing that which he never did either by himself or others mediately or immediately agree unto."

These notions respecting the basis of political society, so far unlike what prevailed among the next generation of churchmen, are chiefly developed and dwelt upon in Hooker's concluding book, the eighth; and gave rise to a rumour, very sedulously propagated soon after the time of its publication, and still sometimes repeated, that the posthumous portion of his work had been interpolated or altered by the puritans.[1] For this surmise, however, I am persuaded that there is no

[1] In the life of Hooker prefixed to the edition I use, fol. 1671, I find an assertion of Dr. Barnard, chaplain to Usher, that he had seen a manuscript of the last books of Hooker, contain-

foundation. The three latter books are doubtless imperfect, and it is possible that verbal changes may have been made by their transcribers or editors; but the testimony that has been brought forward to throw a doubt over their authenticity consists in those vague and self-contradictory stories, which gossiping compilers of literary anecdote can easily accumulate; while the intrinsic evidence, arising from the work itself, on which, in this branch of criticism, I am apt chiefly to rely, seems altogether to repel every suspicion. For not only the principles of civil government, presented in a more expanded form by Hooker in the eighth book, are precisely what he laid down in the first; but there is a peculiar chain of consecutive reasoning running through it, wherein it would be difficult to point out any passages that could be rejected without dismembering the context. It was his business in this part of the Ecclesiastical Polity, to vindicate the queen's supremacy over the church: and this he has done by identifying the church with the commonwealth; no one, according to him, being a member of the one who was not also a member of the other. But as the constitution of the Christian church, so far as the laity partook in its government, by choice of pastors or otherwise, was undeniably democratical, he laboured to show, through the medium of the original compact of civil society, that the sovereign had received this, as well as all other powers, at the hands of the people. "Laws being made among us," he affirms, "are not by any of us so taken or interpreted, as if they did receive their force from power which the prince doth communicate unto the parliament or unto any other court under him, but from power which the whole body of the realm being naturally possessed with, hath by free and deliberate assent derived unto him that ruleth over them so far forth as hath been declared; so that our laws made concerning religion do take originally their essence from the power of the whole realm and church of England."

In this system of Hooker and Locke, for it will be obvious to the reader that their principles were the same, there is much, if I am not mistaken, to disapprove. That no man can be justly bound by laws which his own assent has not ratified, appears to me a position incompatible with the existence of society in its literal sense, or illusory in the sophistical interpretations by which it is usual to evade its meaning. It will be more satisfactory and important to remark the views which this great writer entertained of our own constitution, to which he frequently and fearlessly appeals, as the standing illustration of a

ing many things omitted in the printed volume. One passage is quoted, and seems in Hooker's style. But the question is rather with respect to interpolations than omissions. And of the former I see no evidence or likelihoood. If it be true, as is alleged, that different manuscripts of the three last books did not agree, if even these disagreements were the result of fraud, why should we conclude that they were corrupted by the puritans rather than the church? In Zouch's edition of Walton's Life of Hooker, the reader will find a long and ill-digested note on this subject, the result of which has been to convince me that there is no reason to believe any other than verbal changes to have been made in the loose draught which the author left, but that whatever changes were made, it does not appear that the manuscript was ever in the hands of the puritans. The strongest probability however of their authenticity is from internal evidence.

A late writer has produced a somewhat ridiculous proof of the carelessness with which all editions of the Ecclesiastical Polity have been printed; a sentence having slipped into the text of the seventh book, which makes nonsense, and which he very probably conjectures to have been a margina memorandum of the author for his own use on revising the manuscript. M'Crie's Life of Melvil, vol. i. p. 461.

government restrained by law. "I cannot choose," he says, "but commend highly their wisdom, by whom the foundation of the commonwealth hath been laid; wherein, though no manner of person or cause be unsubject unto the king's power, yet so is the power of the king over all, and in all limited, that unto all his proceedings the law itself is a rule. The axioms of our regal government are these: 'Lex facit regem'—the king's grant of any favour made contrary to the law is void;—'Rex nihil potest nisi quod jure potest'—what power the king hath, he hath it by law: the bounds and limits of it are known, the entire community giveth general order by law, how all things publicly are to be done; and the king, as the head thereof, the highest in authority over all, causeth, according to the same law, every particular to be framed and ordered thereby. The whole body politic maketh laws, which laws give power unto the king; and the king having bound himself to use according to law that power, it so falleth out, that the execution of the one is accomplished by the other." These doctrines of limited monarchy recur perpetually in the eighth book; and though Hooker, as may be supposed, does not enter upon the perilous question of resistance, and even intimates that he does not see how the people can limit the extent of power once granted, unless where it escheats to them, yet he positively lays it down, that usurpers of power, that is, lawful rulers arrogating more than the law gives to them, cannot in conscience bind any man to obedience.

It would perhaps have been a deviation from my subject to enlarge so much on these political principles in a writer of any later age, when they had been openly sustained in the councils of the nation. But as the reigns of the Tudor family were so inauspicious to liberty, that some have been apt to imagine its recollection to have been almost effaced, it becomes of more importance to show that absolute monarchy was, in the eyes of so eminent an author as Hooker, both pernicious in itself, and contrary to the fundamental laws of the English commonwealth. Nor would such sentiments, we may surely presume, have been avowed by a man of singular humility, and whom we might charge with somewhat of an excessive deference to authority, unless they had obtained more currency, both among divines and lawyers, than the complaisance of courtiers in these two professions might lead us to conclude; Hooker being not prone to deal in paradoxes, nor to borrow from his adversaries that sturdy republicanism of the school of Geneva which had been their scandal. I cannot indeed but suspect that his whig principles, in the last book, are announced with a temerity that would have startled his superiors; and that its authenticity, however called in question, has been better preserved by the circumstance of a posthumous publication, than if he had lived to give it to the world. Whitgift would probably have induced him to suppress a few passages incompatible with the servile theories already in vogue. It is far more usual that an author's genuine sentiments are perverted by means of his friends and patrons than of his adversaries.

The prelates of the English church, while they inflicted so many severities on others, had not always cause to exult in their own condition. From the time when Henry taught his courtiers to revel in the spoil of monasteries, there had been a perpetual appetite for ecclesias-

tical possessions. Endowed, by a prodigal superstition, with pomp and wealth beyond all reasonable measure, and far beyond what the new system of religion appeared to prescribe, the church of England still excited the covetousness of the powerful, and the scandal of the austere.[1] I have mentioned in another place how the bishoprics were impoverished in the first reformation under Edward VI. The catholic bishops who followed made haste to plunder, from a consciousness that the goods of their church were speedily to pass into the hands of heretics.[2] Hence the alienation of their estates had gone so far, that in the beginning of Elizabeth's reign statutes were made, disabling ecclesiastical proprietors from granting away their lands, except on leases for three lives, or twenty-one years.[3] But an unfortunate reservation was introduced, in favour of the crown. The queen, therefore, and her courtiers, who obtained grants from her, continued to prey upon their succulent victim. Few of her council imitated the noble disinterestedness of Walsingham, who spent his own estate in her service, and left not sufficient to pay his debts. The documents of that age contain ample proofs of their rapacity. Thus Cecil surrounded his mansion-house at Burleigh with estates, once belonging to the see of Peterborough. Thus Hatton built his house in Holborn on the bishop of Ely's garden. Cox, on making resistance to this spoliation, received a singular epistle from the queen.[4] This bishop, in consequence of such vexations, was desirous of retiring from the see before his death. After that event, Elizabeth kept it vacant eighteen years. During this period we have a petition to her from lord keeper Puckering, that she would confer it on Scambler, bishop of Norwich, then eighty-eight years old, and notorious for simony, in order that he might give him a lease of part of the lands.[5] These transactions denote the mercenary and rapacious spirit which leavened almost all Elizabeth's courtiers.

The bishops of this reign do not appear, with some distinguished exceptions, to have reflected so much honour on the established church as those who attach a superstitious reverence to the age of the reformation are apt to conceive. In the plunder that went forward, they took good care of themselves. Charges against them of simony, corruption, covetousness, and especially destruction of their church estates for the benefit of their families, are very common,—sometimes no doubt un-

[1] The puritans objected to the title of lord bishops. Sampson wrote a peevish letter to Grindal on this, and received a very good answer. Strype's Parker, Append. 178. Parker, in a letter to Cecil, defends it on the best ground; that the bishops hold their lands by barony, and therefore the giving them the title of lords was no irregularity, and nothing more than a consequence of the tenure. Collier, 544. This will not cover our modern *colonial* bishops, on whom the same title has, without any good reason, been conferred.

[2] Strype's Annals, i. 159.

[3] 1 Eliz. c. 19.; 13 Eliz. c. 10. i. Blackstone's Commentaries, vol. ii. c. 28. The exception in favour of the crown was repealed in the first year of James.

[4] It was couched in the following terms:—

"Proud Prelate,

"You know what you were before I made you what you are: if you do not immediately comply with my request, by G— I will unfrock you. "ELIZABETH."

Poor Cox wrote a very good letter before this, printed in Strype's Annals, vol. ii. Append. 84. The names of Hatton Garden and Ely Place (Mantua væ miseræ nimium vicina Cremonæ) still bear witness to the encroaching lord keeper, and the elbowed bishop.

[5] Strype, iv. 246. See also p. 15. of the same volume. By an act in the first year of James, c. 3., conveyances of bishop's lands to the crown are made void; a concession much to the king's honour.

just, but too frequent to be absolutely without foundation.[1] The council often wrote to them, as well as concerning them, with a sort of asperity which would astonish one of their successors. And the queen never restrained herself in treating them on any provocation with a good deal of rudeness, of which I have just mentioned an egregious example.[2] In her speech to parliament on closing the session of 1584, when many complaints against the rulers of the church had rung in her ears, she told the bishops that if they did not amend what was wrong, she meant to depose them. (D'Ewes, 328.) For there seems to have been no question in that age but that this might be done by virtue of the crown's supremacy.

The church of England was not left by Elizabeth in circumstances that demanded applause for the policy of her rulers. After forty years of constantly aggravated molestation of the nonconforming clergy, their numbers were become greater, their popularity more deeply rooted, their enmity to the established order more irreconcilable. It was doubtless a problem of no slight difficulty, by what means so obstinate and opinionated a class of sectaries could have been managed; nor are we perhaps at this distance of time altogether competent to decide upon the fittest course of policy in that respect.[3] But it is manifest that the obstinacy of bold and sincere men is not to be quelled by any punishments that do not exterminate them, and that they were not likely to entertain a less conceit of their own reason when they found no arguments so much relied on to refute it as that of force. Statesmen invariably take a better view of such questions than churchmen; and we may well believe that Cecil and Walsingham judged more sagaciously than Whitgift and Aylmer. The best apology that can be made for Elizabeth's tenaciousness of those ceremonies which produced this fatal contention I have already suggested, without much express authority from the records of that age; namely, the justice and expediency of winning over the catholics to conformity by retaining as much as possible of their accustomed rites. But in the latter period of the queen's reign, this policy had lost a great deal of its application; or rather the same principle of policy would have dictated numerous

[1] Harrington's State of the Church, in Nugæ Antiquæ, vol. ii. passim; Wilkins's Concilia, iv. 256.; Strype's Annals, iii. 620., et alibi; Life of Parker, 454.; of Whitgift, 220.; of Aylmer, passim. Observe the preamble of 13 Eliz. c. 10. It must be admitted, on the other hand, that the gentry, when popishly or puritanically affected, were apt to behave exceedingly ill towards the bishops. At Lambeth and Fulham they were pretty safe; but at a distance they found it hard to struggle with the rudeness and iniquity of the territorial aristocracy; as Sandys twice experienced.

[2] Birch's Memoirs, i. 48. Elizabeth seems to have fancied herself entitled by her supremacy to dispose of bishops as she pleased, though they did not hold commissions durant bene placito, as in her brother's time. Thus she suspended Fletcher, bishop of London, of her own authority, only for marrying "a fine lady and a widow." Strype's Whitgift, 458. And Aylmer having preached too vehemently against female vanity in dress, which came home to the queen's conscience, she told her ladies, that if the bishop held more discourse on such matters, she would fit him for heaven; but he should walk thither without a staff, and leave his mantle behind him. Harrington's State of the Church, in Nugæ Antiquæ, i. 170.; see, too, p. 217. It will of course not appear surprising, that Hutton, archbishop of York, an exceedingly honest prelate, having preached a bold sermon before the queen, urging her to settle the succession, and pointing strongly towards Scotland, received a sharp message, p. 250.

[3] Collier says, p. 586., on Heylin's authority, that Walsingham offered the puritans, about 1583, in the queen's name, to give up the ceremony of kneeling at the communion, the cross in baptism, and the surplice: but that they answered, "ne ungulam quidem esse relinquendam." But I am not aware of any better testimony to the fact; and it is by no means agreeable to the queen's general conduct.

concessions in order to satisfy the people. It appears by no means unlikely that, by reforming the abuses and corruption of the spiritual courts, by abandoning a part of their jurisdiction, so heterogeneous and so unduly obtained, by abrogating obnoxious and at best frivolous ceremonies, by restraining pluralities of benefices, by ceasing to discountenance the most diligent ministers, and by more temper and disinterestedness in their own behaviour, the bishops would have palliated to an indefinite degree that dissatisfaction with the established scheme of polity which its want of resemblance to that of other protestant churches must more or less have produced. Such a reformation would at least have contented those reasonable and moderate persons who occupy sometimes a more extensive ground between contending factions than the zealots of either are willing to believe or acknowledge.

I am very sensible that such freedom as I have used in this chapter cannot be pleasing to such as have sworn allegiance to either the Anglican or the puritan party; and that even candid and liberal minds may be inclined to suspect that I have not sufficiently admitted the excesses of one side to furnish an excuse for those of the other. Such readers I would gladly refer to lord Bacon's Advertisement touching the Controversies of the Church of England; a treatise written under Elizabeth, in that tone of dispassionate philosophy which the precepts of Burleigh, sown in his own deep and fertile mind, had taught him to apply. This treatise, of which I was not aware in writing the present chapter, appears to coincide in every respect with the views it displays. If he censures the pride and obstinacy of the puritan teachers, their indecent and libellous style of writing, their affected imitation of foreign churches, their extravagance of receding from everything formerly practised, he animadverts with no less plainness on the faults of the episcopal party, on the bad example of some prelates, on their peevish opposition to every improvement, their unjust accusations, their contempt of foreign churches, their persecuting spirit.[1]

Yet that we may not deprive this great queen's administration, in what concerned her dealings with the two religious parties opposed to the established church, of what vindication may best be offered for it, I will refer the reader to a letter of sir Francis Walsingham, written to a person in France, after the year 1580.[2] It is a very able apology for

[1] Bacon, ii. 375. See also another paper concerning the pacification of the church, written under James, p. 387. "The wrongs," he says, "of those which are possessed of the government of the church towards the other, may hardly be dissembled or excused." p. 382. Yet Bacon was never charged with affection for the puritans. In truth, Elizabeth and James were personally the great support of the high church interest; it had few real friends among their counsellors.

[2] Burnet, ii. 418. Cabala, part ii. 38. (4to edition). Walsingham grounds the queen's proceedings upon two principles: the one, that "consciences are not to be forced, but to be won and reduced by force of truth, with the aid of time, and use of all good means of instruction and persuasion;" the other, that "cases of conscience, when they exceed their bounds, and grow to be matter of faction, lose their nature; and that sovereign princes ought distinctly to punish their practices and contempt, though coloured with the pretence of conscience and religion." Bacon has repeated the same words, as well as some more of Walsingham's letter, in his observations on the libel on lord Burleigh, i. 522. And Mr. Southey (Book of the Church, i. 291.) seems to adopt them as his own.

Upon this I have to observe; first, that they take for granted the fundamental sophism of religious intolerance, namely, that the civil magistrate, or the church he supports, is not only in the right, but so clearly in the right, that no honest man, if he takes time and pains to consider the subject, can help acknowledging it: secondly, that, according to the principles of

her government; and if the reader should detect, as detect he doubtless may, somewhat of sophistry in reasoning, and of mis-statement in matter of fact, he will ascribe both one and the other to the narrow spirit of the age with respect to civil and religious freedom, or to the circumstances of the writer, an advocate whose sovereign was his client.

CHAPTER V.

ON THE CIVIL GOVERNMENT OF ELIZABETH.

General Remarks—Defective Security of the Subject's Liberty—Trials for Treason and other political Offences unjustly conducted—Illegal Commitments—Remonstrance of Judges against them—Proclamations unwarranted by Law—Restrictions on Printing—Martial Law—Loans of Money not quite voluntary—Character of Lord Burleigh's Administration—Disposition of the House of Commons—Addresses concerning the Succession—Difference on this between the Queen and Commons in 1566—*Session of* 1571—*Influence of the Puritans in Parliament—Speech of Mr. Wentworth in* 1576—*The Commons continue to seek Redress of ecclesiastical Grievances—Also of Monopolies, especially in the Session of* 1601—*Influence of the Crown in Parliament—Debate on Election of non-resident Burgesses—Assertion of Privileges by Commons—Case of Ferrers, under Henry VIII.—Other Cases of Privilege—Privilege of determining contested Elections claimed by the House—The English Constitution not admitted to be an absolute Monarchy—Pretensions of the Crown.*—pp. 169–206.

THE subject of the two last chapters, I mean the policy adopted by Elizabeth for restricting the two religious parties which from opposite quarters resisted the exercise of her ecclesiastical prerogatives, has already afforded us many illustrations of what may more strictly be reckoned the constitutional history of her reign. The tone and temper of her administration have been displayed in a vigilant execution of severe statutes, especially towards the catholics, and sometimes in stretches of power beyond the law. And as Elizabeth had no domestic enemies or refractory subjects who did not range under one or other of

Christianity as admitted on each side, it does not rest in an esoteric persuasion, but requires an exterior profession, evinced both by social worship, and by certain positive rights; and that the marks of this profession, according to the form best adapted to their respective ways of thinking, were as incumbent upon the catholic and puritan, as they were upon the primitive church: nor were they more chargeable with faction, or with exceeding the bounds of conscience, when they persisted in the use of them, notwithstanding any prohibitory statute, than the early Christians.

The generality of statesmen, and churchmen themselves not unfrequently, have argued upon the principles of what, in the seventeenth century, was called Hobbism, towards which the Erastian system, which is that of the church of England, though excellent in some points of view, has a tendency to gravitate; namely, that civil and religious allegiance are so necessarily connected, that it is the subject's duty to follow the dictates of the magistrate in both alike. And this received some countenance from the false and mischievous position of Hooker, that the church and commonwealth are but different denominations of the same society. Warburton has sufficiently exposed the sophistry of this theory; though I do not think him equally successful in what he substitutes for it.

these two sects, and little disagreement with her people on any other grounds, the ecclesiastical history of this period is the best preparation for our inquiry into the civil government. In the present chapter I shall first offer a short view of the practical exercise of government in this reign, and then proceed to show how the queen's high assumptions of prerogative were encountered by a resistance in parliament, not quite uniform, but insensibly becoming more vigorous.

Elizabeth ascended the throne with all the advantages of a very extended authority. Though the jurisdiction actually exerted by the court of star-chamber could not be vindicated according to statute-law, it had been so well established as to pass without many audible murmurs. Her progenitors had intimidated the nobility; and if she had something to fear at one season from this order, the fate of the duke of Norfolk and of the rebellious earls in the north, put an end for ever to all apprehension from the feudal influence of the aristocracy. There seems no reason to believe that she attempted a more absolute power than her predecessors; the wisdom of her counsellors, on the contrary, led them generally to shun the more violent measures of the late reigns; but she certainly acted upon many of the precedents they had bequeathed her, with little consideration of their legality. Her own remarkable talents, her masculine intrepidity, her readiness of wit and royal deportment, which the bravest men unaffectedly dreaded, her temper of mind above all, at once fiery and inscrutably dissembling, would in any circumstances have ensured her more real sovereignty than weak monarchs, however nominally absolute, can ever enjoy or retain. To these personal qualities was added the co-operation of some of the most diligent and circumspect, as well as the most sagacious counsellors that any prince has employed; men as unlikely to loose from their grasp the least portion of that authority which they found themselves to possess, as to excite popular odium by an unusual or misplaced exertion of it. The most eminent instances, as I have remarked, of a high-strained prerogative in her reign, have some relation to ecclesiastical concerns; and herein the temper of the predominant religion was such as to account no measures harsh or arbitrary that were adopted towards its conquered but still formidable enemy. Yet when the royal supremacy was to be maintained against a different foe by less violent acts of power, it revived the smouldering embers of English liberty. The stern and exasperated puritans became the depositaries of that sacred fire; and this manifests a second connection between the temporal and ecclesiastical history of the present reign.

Civil liberty, in this kingdom, has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of parliament, without let or interruption, to inquire into, and obtain the redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise. In this, much more than in positive law, our ancient constitution, both under the Plantagenet and Tudor line, had ever been failing; and it has been because one set of writers have looked merely

to the letter of our statutes or other authorities, while another have been almost exclusively struck by instances of arbitrary government they found on record, that such incompatible systems have been laid down with equal positiveness on the character of that constitution.

I have found it impossible not to anticipate, in more places than one, some of those glaring transgressions of natural as well as positive law, that rendered our courts of justice in cases of treason little better than the caverns of murderers. Whoever was arraigned at their bar was almost certain to meet a virulent prosecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive pusillanimous jury. Those who are acquainted only with our modern decent and dignified procedure, can form little conception of the irregularity of ancient trials; the perpetual interrogation of the prisoner, which justly gives us so much offence at this day in the tribunals of a neighbouring kingdom; and the want of all evidence except written, and perhaps unattested, examinations or confessions. Babington, one of the conspirators against Elizabeth's life in 1586, complained that two witnesses had not been brought against him, conformably to the statute of Edward VI. But Anderson the chief justice told him, that as he was indicted on the act of Edward III., that provision was not in force. (State Trials, i. 1148.) In the case of captain Lee, a partisan of Essex and Southampton, the court appear to have denied the right of peremptory challenge. (Id. i. 1256.) Nor was more equal measure dealt to the noblest prisoners by their equals. The earl of Arundel was convicted of imagining the queen's death, on evidence which at the utmost would only have supported an indictment for reconciliation to the church of Rome. (Id. i. 1403.)

The integrity of judges is put to the proof as much by prosecutions for seditious writings as by charges of treason. I have before mentioned the conviction of Udal and Penry, for a felony created by the 23rd of Elizabeth; the former of which, especially, must strike every reader of the trial as one of the gross judicial iniquities of this reign. But before this sanguinary statute was enacted, a punishment of uncommon severity had been inflicted upon one Stubbe, a puritan lawyer, for a pamphlet against the queen's intended marriage with the duke of Anjou. It will be in the recollection of most of my readers that, in the year 1579, Elizabeth exposed herself to much censure and ridicule, and inspired the justest alarm in her most faithful subjects, by entertaining, at the age of forty-six, the proposals of this young scion of the house of Valois. Her council, though several of them, in their deliberations, had much inclined against the preposterous alliance, yet in the end, displaying the compliance usual with the servants of self-willed princes, agreed, "conceiving," as they say, "her earnest disposition for this her marriage," to further it with all their power. Sir Philip Sidney with more real loyalty wrote her a spirited remonstrance, which she had the magnanimity never to resent.[1] But she poured her indignation on

[1] Murden, 337. Dr. Lingard has fully established, what indeed no one could reasonably have disputed, Elizabeth's passion for Anjou; and says very truly, "the writers who set all this down to policy cannot have consulted the original documents," p. 149. It was altogether repugnant to sound policy. Persons, the jesuit, indeed says, in his famous libel, Leicester's Commonwealth, written not long after this time, that it would have been "honourable, convenient, profitable, and needful;" which every honest Englishman would interpret by the rule of contraries. Sussex wrote indeed to the queen in favour of the marriage (Lodge, ii. 177.):

Stubbe, who, not entitled to use a private address, had ventured to arouse a popular cry in his "Gaping Gulph, in which England will be swallowed up by the French Marriage." This pamphlet is very far from being, what some have ignorantly or unjustly called it, a virulent libel; but is written in a sensible manner, and with unfeigned loyalty and affection towards the queen. But besides the main offence of addressing the people on state affairs, he had, in the simplicity of his heart, thrown out many allusions proper to hurt her pride, such as dwelling too long on the influence her husband would acquire over her, and imploring that she would ask her physicians, whether to bear children at her years would not be highly dangerous to her life. Stubbe for writing this pamphlet received sentence to have his right hand cut off. When the penalty was inflicted, taking off his hat with his left, he exclaimed, "Long live Queen Elizabeth!" Burleigh, who knew that his fidelity had borne so rude a test, employed him afterwards in answering some of the popish libellers.[1]

There is no room for wonder at any verdict that could be returned by a jury, when we consider what means the government possessed of securing it. The sheriff returned a pannel, either according to express directions, of which we have proofs, or to what he judged himself of the crown's intention and interest. (Lodge, ii. 412.; iii. 49.) If a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the star-chamber; lucky if they should escape, on humble retractation, with sharp words instead of enormous fines and indefinite imprisonment. The control of this arbitrary tribunal bound down and rendered impotent all the minor jurisdictions. That primæval institution, those inquests by twelve true men, the unadulterated voice of the people, responsible alone to God and their conscience, which should have been heard in the sanctuaries of justice, as fountains springing fresh from the lap of earth, became, like waters constrained in their course by art, stagnant and impure. Until this weight that hung upon the constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which it held forth.[2]

It cannot be too frequently repeated, that no power of arbitrary

and Cecil undoubtedly professed to favour it; but this must have been out of obsequiousness to the queen. It was a habit of this minister to set down briefly the arguments on both sides of a question, sometimes in parallel columns, sometimes successively: a method which would seem too formal in our age, but tending to give himself and others a clearer view of the case. He has done this twice in the present instance; Murden, 322. 331.; and it is evident that he does not, and cannot, answer his own objections to the match. When the council waited on her with this resolution in favour of the marriage, she spoke sharply to those whom she believed to be against it. Yet the treaty went on for two years; her coquetry in this strange delay breeding her, as Walsingham wrote from Paris, "greater dishonour than I dare commit to paper." Strype's Annals, iii. 2. That she ultimately broke it off, must be ascribed to the suspiciousness and irresolution of her character, which, acting for once conjointly with her good understanding, overcame a disgraceful inclination.

[1] Strype, iii. 480. Stubbe always signed himself Scæva, in these left-handed productions.

[2] Several volumes of the Harleian MSS. illustrate the course of government under Elizabeth. The copious analysis in the catalogue, by Humphrey Wanley and others, which I have in general found accurate, will, for most purposes, be sufficient. See particularly vol. 703. A letter, inter alia, in this (folio 1.), from Lord Hunsdon and Walsingham to the sheriff of Sussex, directs him not to assist the creditors of John Ashburnham in molesting him, "till such time as our determination touching the premises shall be known." Ashburnham being to attend the council to prefer his complaint. See also vols. 6995, 6996, 6997, and many others. The Lansdowne catalogue will furnish other evidences.

detention has ever been known to our constitution since the charter obtained at Runnymede. The writ of habeas corpus has always been a matter of right. But as may naturally be imagined, no right of the subject, in his relation to the crown, was preserved with greater difficulty. Not only the privy-council in general arrogated to itself a power of discretionary imprisonment, into which no inferior court was to inquire, but commitments by a single councillor appear to have been frequent. These abuses gave rise to a remarkable complaint of the judges, which, though an authentic recognition of the privilege of personal freedom against such irregular and oppressive acts of individual ministers, must be admitted to leave by far too great latitude to the executive government, and to surrender, at least by implication from rather obscure language, a great part of the liberties which many statutes had confirmed.[1] This is contained in a passage from chief justice Anderson's Reports. But as there is an original manuscript in the British Museum, differing in some material points from the print, I shall follow it in preference.[2]

"To the Rt: hon: our very good lords sir Chr. Hatton, of the honourable order of the garter knight, and chancellor of England, and sir W. Cecill of the hon: order of the garter knight, lord Burleigh, lord high treasurer of England,—We her majesty's justices, of both benches, and barons of the exchequer, do desire your lordships, that by your good means such order may be taken that her highness's subjects may not be committed or detained in prison, by commandment of any nobleman or counsellor against the laws of the realm to the grievous charges and oppression of her majesty's said subjects: Or else help us to have access to her majesty, to be suitors unto her highness for the same; for divers have been imprisoned for suing ordinary actions, and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.

"Item: Others have been committed and detained in prison upon such commandment against the law and upon the queen's writ in that behalf, no cause sufficient hath been certified or returned.

"Item: Some of the parties so committed and detained in prison after they have, by the queen's writ, been lawfully discharged in court, have been eftsoones recommitted to prison in secret places, and not in common and ordinary known prisons, as the Marshalsea, Fleet, King's Bench, Gatehouse, nor the custodie of any sheriff, so as upon complaint made for their delivery, the queen's court cannot learn to whom to award her majesty's writ, without which justice cannot be done.

"Item: Divers serjeants of London and officers have been many times committed to prison for lawful execution of her majesty's writs out of the King's Bench, Common Pleas, and other courts, to their great charges and oppression, whereby they are put in such fear as they dare not execute the queen's process.

[1] Anderson's Reports, i. 297. It may be found also in the Biographia Britannica, and the Biographical Dictionary, art. Anderson.

[2] Lansdowne MSS. lviii. 87. The Harleian MS. 6846. is a mere transcript from Anderson, and consequently of no value. There is another in the same collection, at which I have not looked.

"Item: Divers have been sent for by pursuivants for private causes, some of them dwelling far distant from London, and compelled to pay to the pursuivants great sums of money against the law, and have been committed to prison till they would release the lawful benefit of their suits, judgments, or executions for remedie, in which behalf we are almost daily called upon to minister justice according to law, whereunto we are bound by our office and oath.

"And whereas it pleased your lordships to will divers of us to set down when a prisoner sent to custody by her majesty, her council, or some one or two of them is to be detained in prison, and not to be delivered by her majesty's courts or judges:

"We think that, if any person shall be committed by her majesty's special commandment, or by order from the council-board, or for treason touching her majesty's person, (five letters follow, illegible to me), which causes being generally returned into any court, is good cause for the same court to leave the person committed in custody.

"But if any person shall be committed for any other cause, then the same ought specially to be returned."

This paper bears the original signatures of eleven judges. It has no date, but is indorsed 5 June, 1591. In the printed report, it is said to have been delivered in Easter term 34 Eliz., that is in 1592. The chancellor Hatton, whose name is mentioned, died in November 1591; so that, if there is no mistake, this must have been delivered a second time, after undergoing the revision of the judges. And in fact the differences are far too material to have proceeded from accidental carelessness in transcription. The latter copy is fuller, and on the whole more perspicuous than the manuscript I have followed; but in one or two places it will be better understood by comparison with it.

It was a natural consequence, not more of the high notions entertained of prerogative, than of the very irregular and infrequent meeting of parliament, that an extensive and somewhat indefinite authority should be arrogated to proclamations of the king in council. Temporary ordinances, bordering at least on legislative authority, grow out of the varying exigencies of civil society, and will by very necessity be put up with in silence, whereever the constitution of the commonwealth does not, directly or in effect, provide for frequent assemblies of the body in whom the right of making or consenting to laws has been vested. Since the English constitution has reached its zenith, we have endeavoured to provide a remedy by statute for every possible mischief or inconvenience; and if this has swollen our code to an enormous redundance, till, in the labyrinth of written law, we almost feel again the uncertainties of arbitrary power, it has at least put an end to such exertions of prerogative as fell at once on the persons and properties of whole classes. It seems by the proclamations issued under Elizabeth, that the crown claimed a sort of supplemental right of legislation, to perfect and carry into effect what the spirit of existing laws might require, as well as a paramount supremacy, called sometimes the king's absolute or sovereign power, which sanctioned commands beyond the legal prerogative for the sake of public safety, whenever the council might judge that to be in hazard. Thus we find anabaptists, without distinction of natives or aliens, banished the realm; Irishmen

commanded to depart into Ireland; the culture of woad,[1] and the exportation of corn, money, and various commodities prohibited; the excess of apparel restrained. A proclamation in 1580 forbids the erection of houses within three miles of London, on account of the too great increase of the city, under the penalty of imprisonment and forfeiture of the materials. (Camden, 476.) This is repeated at other times, and lastly (I mean during her reign), in 1602 with additional restrictions. (Rymer, xvi. 448.) Some proclamations in this reign hold out menaces, which the common law could never have executed on the disobedient. To trade with the French king's rebels, or to export victuals into the Spanish dominions (the latter of which might possibly be construed into assisting the queen's enemies), incurred the penalty of treason. And persons having in their possession goods taken on the high seas, which had not paid customs, are enjoined to give them up, on pain of being punished as felons and pirates.[2] Notwithstanding these instances, it cannot perhaps be said, on the whole that Elizabeth stretched her authority very outrageously in this respect. Many of her proclamations, which may at first sight appear illegal, are warrantable by statutes then in force, or by ancient precedents. Thus the council is empowered by an act 28 H. 8. c. 14. to fix the prices of wines; and abstinence from flesh in Lent, as well as on Fridays and Saturdays, a common subject of Elizabeth's proclamations, is enjoined by several statutes of Edward VI. and of her own.[3] And it has been argued by some not at all inclined to diminish any popular rights, that the king did possess a prerogative by common law of restraining the export of corn and other commodities.[4]

It is natural to suppose, that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free inquiry through the press. The trades of printing and bookselling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors,[5] the council frequently issued proclamations to restrain the importation of books, or to regulate their sale.[6] It was penal to utter, or so much as to possess, even the most learned works on the catholic side; or if some connivance was usual in favour of educated men, the utmost strictness was used in suppressing that light infantry of literature, the

[1] Hume says, "that the queen had taken a dislike to the smell of this useful plant." But this reason, if it existed, would hardly have induced her to prohibit its cultivation throughout the kingdom. The real motive appears in several letters of the Lansdowne collection. By the domestic culture of woad, the customs on its importation were reduced; and this led to a project of levying a sort of excise upon it at home. Catalogue of Lansdowne MSS. xliv. 32-60. The same principle has since caused the prohibition of sowing tobacco.

[2] Many of these proclamations are scattered through Rymer; and the whole have been collected in a volume.

[3] By a proclamation in 1560, butchers killing flesh in Lent are made subject to a specific penalty of 20*l*.; which was levied upon one man. Strype's Annals, i. 235. This seems to have been illegal.

[4] Lord Camden in 1766. Hargrave, in preface to Hale de Jure Coronæ, in Law Tracts, volume i.

[5] We find an exclusive privilege granted in 1563 to Thomas Cooper, afterwards bishop of Winchester, to print his Thesaurus, or Latin dictionary, for twelve years. Rymer, xv. 620.; and to Richard Wright to print his translation of Tacitus during his natural life; any one infringing this privilege to forfeit 40*s.* for every printed copy. Id. xvi. 97.

[6] Strype's Parker, 221. By the 51st of the queen's injunctions, in 1559, no one might print any book or paper whatsoever unless the same be first licensed by the council or ordinary.

smart and vigorous pamphlets, with which the two parties arrayed against the church assaulted her opposite flanks.[1] Stowe, the well-known chronicler of England, who lay under suspicion of attachment to popery, had his library searched by warrant, and his unlawful books taken away; several of which were but materials for his work.[2] Whitgift, in this as in every other respect, aggravated the rigour of preceding times. At his instigation, the star-chamber in 1585, published ordinances for the regulation of the press. The preface to these recites enormities and abuses of disorderly persons professing the art of printing and selling books to have more and more increased in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer therefore is enjoined to certify his presses to the Stationer's Company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer who has only set up his trade within six months to exercise it any longer, nor any to begin it in future, until the excessive multitude of printers be diminished, and brought to such a number as the archbishop of Canterbury and bishop of London for the time being shall think convenient; but whenever any addition to the number of master printers shall be required, the Stationers' Company shall select proper persons to use that calling with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the archbishop of Canterbury, or bishop of London, except the queen's printer, to be appointed for some special service, or law printers, who shall require the licence only of the chief justices. Every one selling books printed contrary to the intent of this ordinance to suffer three month's imprisonment. The Stationers' Company empowered to search houses and shops of printers and booksellers, and to seize all the books printed in contravention of this ordinance, to destroy and deface the presses, and to arrest and bring before the council those who shall have offended therein.[3]

The forms of English law, however inadequate to defend the subject in state prosecutions, imposed a degree of seeming restraint on the crown, and wounded that pride which is commonly a yet stronger sentiment than the lust of power, with princes and their counsellors. It was possible that juries might absolve a prisoner; it was always necessary that they should be the arbiters of his fate. Delays too were interposed by the regular process; not such, perhaps, as the life of man should require, yet enough to weaken the terrors of summary

[1] A proclamation, dated, Feb. 1589, against seditious and schismatical books and writings, commands all persons who shall have in their custody any such libels against the order and government of the church of England, or the rites and ceremonies used in it, to bring and deliver up the same with convenient speed to their ordinary. Life of Whitgift, Append. 126. This has probably been one cause of the extreme scarcity of the puritanical pamphlets.

[2] Strype's Grindal, 124., and App. 43., where a list of these books is given.

[3] Strype's Whitgift, 222., and App. 94. The archbishop exercised his power over the press, as may be supposed, with little moderation. Not confining himself to the suppression of books favouring the two religions adverse to the church, he permitted nothing to appear that interfered in the least with his own notions. Thus we find him seizing an edition of some works of Hugh Broughton, an eminent Hebrew scholar. This learned divine differed from Whitgift about Christ's descent to hell. It is amusing to read, that ultimately the primate came over to Broughton's opinion: which, if it prove some degree of candour, is a glaring evidence of the advantages of that free inquiry he had sought to suppress. P. 384. 431.

punishment. Kings love to display the divinity with which their flatterers invest them in nothing so much as the instantaneous execution of their will: and to stand revealed as it were in the storm and thunderbolt, when their power breaks through the operation of secondary causes, and awes a prostrate nation without the intervention of law. There may indeed be times of pressing danger, when the conservation of all demands the sacrifice of the legal rights of a few; there may be circumstances that not only justify, but compel the temporary abandonment of constitutional forms. It has been usual for all governments during an actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction. And this anomaly, I must admit, is very far from being less indispensable at such unhappy seasons, where the ordinary mode of trial is by jury, than where the right of decision resides in the court. But it is of high importance to watch with extreme jealousy the disposition towards which most governments are prone, to introduce too soon, to extend too far, to retain too long, so perilous a remedy. In the fourteenth and fifteenth centuries, the court of the constable and marshal, whose jurisdiction was considered as of a military nature, and whose proceedings were not according to the course of the common law, sometimes tried offenders by what was called martial law, but only, I believe, either during, or not long after a serious rebellion. This tribunal fell into disuse under the Tudors. But Mary had executed some of those taken in Wyatt's insurrection without regular process, though their leader had his trial by a jury. Elizabeth, always hasty in passion, and quick to punish, would have resorted to this summary course on a slighter occasion. One Peter Burchell, a fanatical puritan, and perhaps insane, conceiving that sir Christopher Hatton was an enemy to true religion, determined to assassinate him. But by mistake he wounded instead a famous seaman, captain Hawkins. For this ordinary crime, the queen could hardly be prevented from directing him to be tried instantly by martial law. Her council, however, and this it is important to observe, resisted this illegal proposition with spirit and success.[1] We have indeed a proclamation some years afterwards, declaring that such as brought into the kingdom or dispersed papal bulls, or traitorous libels against the queen, should with all severity be proceeded against by her majesty's lieutenants or their deputies, by martial law, and suffer such pains and penalties as they should inflict; and that none of her said lieutenants or their deputies be any wise impeached in body, lands, or goods, at any time hereafter, for any thing to be done or executed in the punishment of any such offender, according to the said martial law, and the tenor of this proclamation, any law or statute to the contrary in any wise notwithstanding.[2] This measure, though by no

[1] Camden, 449. Strype's Annals, ii. 288. The queen had been told, it seems, of what was done in Wyatt's business, a case not at all parallel; though there was no sufficient necessity even in that instance to justify the proceeding by martial law. But bad precedents always beget "progeniem vitiosiorem."

There was a difficulty how to punish Burchell capitally, which probably suggested to the queen this strange expedient. It is said, which is full as strange, that the bishops were about to pass sentence on him for heresy, in having asserted that a papist might lawfully be killed. He put an end, however, to this dilemma, by cleaving the skull of one of the keepers in th Tower, and was hanged in a common way.

[2] Strype's Annals, iii. 570. Life of Whitgift, Append. 126.

means constitutional, finds an apology in the circumstances of the time. It bears date the 1st of July, 1588, when within the lapse of a few days the vast armament of Spain might effect a landing upon our coasts; and prospectively to a crisis, when the nation, struggling for life against an invader's grasp, could not afford the protection of law to domestic traitors. But it is an unhappy consequence of all deviations from the even course of law, that the forced acts of over-ruling necessity come to be distorted into precedents to serve the purposes of arbitrary power. No other measure of Elizabeth's reign can be compared, in point of violence and illegality, to a commission in July 1595, directed to sir Thomas Wilford: whereby upon no other allegation than that there had been of late sundry great unlawful assemblies of a number of base people in riotous sort, both in the city of London and the suburbs, for the suppression whereof, for that the insolency of many desperate offenders is such, that they care not for any ordinary punishment by imprisonment, it was found necessary to have some such notable rebellious persons to be speedily suppressed by execution to death, according to the justice of martial law, he is appointed provost-marshal, with authority, on notice by the magistrates, to attach and seize such notable rebellious and incorrigible offenders, and in the presence of the magistrates to execute them openly on the gallows. The commission empowers him also "to repair to all common highways near to the city, which any vagrant persons do haunt, and, with the assistance of justices and constables, to apprehend all such vagrant and suspected persons, and them to deliver to the said justices, by them to be committed and examined of the causes of their wandering, and finding them notoriously culpable in their unlawful manner of life, as incorrigible, and so certified by the said justices, to cause to be executed upon the gallows or gibbet some of them that are so found most notorious and incorrigible offenders; and some such also of them as have manifestly broken the peace, since they have been adjudged and condemned to death for former offences, and had the queen's pardon for the same." (Rymer, xvi. 279.)

This peremptory style of superseding the common law was a stretch of prerogative without an adequate parallel, so far as I know, in any former period. It is to be remarked, that no tumults had taken place of any political character or of serious importance, some riotous apprentices only having committed a few disorders. (Carte, 693., from Stowe.) But rather more than usual suspicion had been excited about the same time by the intrigues of the jesuits in favour of Spain, and the queen's advanced age had begun to renew men's doubts as to the succession. The rapid increase of London gave evident uneasiness, as the proclamations against new buildings show, to a very cautious administration, environed by bold and inveterate enemies, and entirely destitute of regular troops to withstand a sudden insurrection. Circumstances of which we are ignorant, I do not question, gave rise to this extraordinary commission. The executive government, in modern times, has been invested with a degree of coercive power to maintain obedience, of which our ancestors, in the most arbitrary reigns, had no practical experience. If we reflect upon the multitude of statutes enacted since the days of Elizabeth in order to restrain and suppress

disorder, and above all on the prompt and certain aid that a disciplined army affords to our civil authorities, we may be inclined to think that it was rather the weakness than the vigour of her government which led to its inquisitorial watchfulness and harsh measures of prevention. We find in an earlier part of her reign an act of state somewhat of the same character, though not perhaps illegal. Letters were written to the sheriffs and justices of divers counties in 1569, directing them to apprehend, on a certain night, all vagabonds and idle persons having no master, nor means of living, and either to commit them to prison, or pass them to their proper homes. This was repeated several times; and no less than 13,000 persons were thus apprehended, chiefly in the north, which, as Strype says, very much broke the rebellion attempted in that year. (Strype's Annals, i. 535.)

Amidst so many infringements of the freedom of commerce, and with so precarious an enjoyment of personal liberty, the English subject continued to pride himself in his immunity from taxation without consent of parliament. This privilege he had asserted, though not with constant success, against the rapacity of Henry VII. and the violence of his son. Nor was it ever disputed in theory by Elizabeth. She retained, indeed, notwithstanding the complaints of the merchants at her accession, a custom upon cloths, arbitrarily imposed by her sister, and laid one herself upon sweet wines. But she made no attempt at levying internal taxes, except that the clergy were called upon, in 1586, for an aid not granted in convocation, but assessed by the archdeacon according to the value of their benefices; to which they naturally showed no little reluctance.[1] By dint of singular frugality she continued to steer the true course so as to keep her popularity undiminished and her prerogative unimpaired; asking very little of her subjects' money in parliaments, and being hence enabled both to have long breathing times between their sessions, and to meet them without coaxing or wrangling; till, in the latter years of her reign, a foreign war and a rebellion in Ireland, joined to a rapid depreciation in the value of money, rendered her demands somewhat higher. But she did not abstain from the ancient practice of sending privy-seals to borrow money of the wealthy. These were not considered as illegal, though plainly forbidden by the statute of Richard III.; for it was the fashion to set aside the authority of that act, as having been passed by an usurper. It is impossible to doubt that such loans were so far obtained by compulsion, that any gentleman or citizen of sufficient ability refusing compliance would have discovered that it were far better to part with his money than to incur the council's displeasure. We have

[1] Strype iii. Append, 147. This was exacted in order to raise men for service in the Low Countries. But the beneficed clergy were always bound to furnish horses and armour, or their value, for the defence of the kingdom in peril of invasion or rebellion. An instance of their being called on for such a contingent occurred in 1569. Strype's Parker, 273.; and Rymer will supply many others in earlier times.

The magistrates of Cheshire and Lancashire had imposed a charge of eightpence a week on each parish of those counties for the maintenance of recusants in custody. This, though very nearly borne out by the letter of a recent statute, 14th Eliz. c. 5., was conceived by the inhabitants to be against law. We have, in Strype's Annals, vol iii. App. 56., a letter from the privy-council, directing the charge to be taken off. It is only worth noticing, as it illustrates the jealousy which the people entertained of any thing approaching to taxation without consent of parliament, and the caution of the ministry in not pushing any exertion of prerogative farther than would readily be endured.

indeed a letter from a lord mayor to the council, informing them that he had committed to prison some citizens for refusing to pay the money demanded of them.[1] But the queen seems to have been punctual in their speedy repayment according to stipulation; a virtue somewhat unusual with royal debtors. Thus we find a proclamation in 1571, that such as had lent the queen money in the last summer should receive repayment in November and December.[2] Such loans were but an anticipation of her regular revenue, and no great hardship on rich merchants; who, if they got no interest for their money, were recompensed with knighthoods and gracious words. And as Elizabeth incurred no debt till near the conclusion of her reign, it is probable that she never had borrowed more than she was sure to repay.

A letter quoted by Hume from lord Burleigh's papers though not written by him, as the historian asserts, and somewhat obscure in its purport, appears to warrant the conclusion that he had revolved in his mind some project of raising money by a general contribution or benevolence from persons of ability, without purpose of repayment. This was also amidst the difficulties of the year 1569, when Cecil perhaps might be afraid of meeting parliament, on account of the factions leagued against himself. But as nothing further was done in this matter, we must presume that he perceived the impracticability of so unconstitutional a scheme.[3]

Those whose curiosity has led them to somewhat more acquaintance with the details of English history under Elizabeth than the pages of Camden or Hume will afford, cannot but have been struck with the perpetual interference of men in power with matters of private concern. I am far from pretending to know how far the solicitations for a prime

[1] Murden, 632. That some degree of intimidation was occasionally made use of, may be inferred from the following letter of sir Henry Cholmley to the mayor and aldermen of Chester, in 1597. He informs them of letters received by him from the council, "whereby I am commanded in all haste to require you that you and every of you send in your several sums of money unto Torpley (Tarporly) on Friday next the 23rd Dec., or else that you and every of you give me meeting there, the said day and place, to enter severally into bond to her highness for your appearance forthwith before their lordships, to show cause wherefore you and every of you should refuse to pay her majesty loan according to her highness several privy-seals by you received, letting you wit that I am now directed by other letters from their lordships to pay over the said money to the use of her majesty, and to send and certify the said bonds so taken; which praying you heartily to consider of as the last direction of the service, I heartily bid you farewell." Harl. MSS. 2173. 10.

[2] Strype, ii. 102. In Haynes, p. 518., is the form of a circular letter or privy-seal, as it was called from passing that office, sent in 1569, a year of great difficulty, to those of whose aid the queen stood in need. It contains a promise of repayment at the expiration of twelve months. A similar application was made through the lord-lieutenants in their several counties, to the wealthy and well-disposed, in 1588, immediately after the destruction of the Armada. The loans are asked only for the space of a year, "as heretofore has been yielded unto her majesty in times of less need and danger, and yet always fully repaid." Strype, iii. 535. Large sums of money are said to have been demanded of the citizens of London in 1599. Carte, 675. It is perhaps to this year that we may refer a curious fact mentioned in Mr. justice Hutton's judgment in the case of ship-money. "In the time of Queen Elizabeth (he says), who was a gracious and glorious queen, yet in the end of her reign, whether through covetousness, or by reason of the wars that came upon her, I know not by what council she desired benevolence, the statute of 2d. Richard III. was pressed, yet it went so far, that by commission and direction money was gathered in every inn of court; and I myself for my part paid twenty shillings. But when the queen was informed by her judges that this kind of proceeding was against law, she gave directions to pay all such sums as were collected back; and so I (as all the rest of our house, and as I think of other houses too) had my twenty shillings repaid me again; and privy counsellors were sent down to all parts, to tell them that it was for the defence of the realm, and it should be repaid them again." State Trials, iii. 1199.

[3] Haynes, 518. Hume has exaggerated this, like other facts, in his very able, but partial sketch of the constitution in Elizabeth's reign.

minister's aid and influence may extend at present. Yet one may think, that he would hardly be employed, like Cecil, where he had no personal connexion, in reconciling family quarrels, interceding with a landlord for his tenant, or persuading a rich citizen to bestow his daughter on a young lord. We are sure, at least, that he would not use the air of authority upon such occasions. The vast collection of lord Burleigh's letters in the Museum is full of such petty matters, too insignificant, for the most part, to be mentioned even by Strype.[1] They exhibit, however, collectively a curious view of the manner in which England was managed, as if it had been the household and estate of a nobleman under a strict and prying steward. We are told that the relaxation of this minister's mind was to study the state of England and the pedigrees of its nobility and gentry: of these last he drew whole books with his own hands; so that he was better versed in descents and families than most of the heralds, and would often surprise persons of distinction at his table by appearing better acquainted with their manors, parks, and woods, than themselves. (Biog. Britan., art. CECIL.) Such knowledge was not sought by the crafty Cecil for mere diversion's sake. It was a main part of his system to keep alive in the English gentry a persuasion that his eye was upon them. No minister was ever more exempt from that false security which is the usual weakness of a court. His failing was rather a bias towards suspicion and timidity; there were times, at least, in which his strength of mind seems to have almost deserted him, through sense of the perils of his sovereign and country. But those perils appear less to us, who know how the vessel outrode them, than they could do to one harassed by continual informations of those numerous spies whom he employed both at home and abroad. The one word of Burleigh's policy was prevention; and this was dictated by a consciousness of wanting an armed force or money to support it, as well as by some uncertainty as to the public spirit, in respect at least of religion. But a government that directs its chief attention to prevent offences against itself is in its very nature incompatible with that absence of restraint, that immunity from suspicion, in which civil liberty, as a tangible possession, may be said to consist. It appears probable, that Elizabeth's administration carried too far, even as a matter of policy, this precautionary system upon which they founded the penal code against popery; and we may surely point to a contrast very advantageous to our modern constitution, in the lenient treatment which the Jacobite faction experienced from the princes of the house of Hanover. She reigned however in a period of real difficulty and danger. At such seasons, few ministers will abstain from arbitrary actions, except those who are not strong enough to practise them.

I have traced, in another work, the acquisition by the house of commons of a practical right to inquire into and advise upon the public administration of affairs, during the reigns of Edward III.,

[1] The following are a few specimens, copied from the Lansdowne catalogue. "Sir Antony Cook to sir William Cecil, that he would move Mr. Peters to recommend Mr. Edward Stanhope to a certain young lady of Mr. P.'s acquaintance, whom Mr. Stanhope was desirous to marry." Jan. 25. 1563. lxxi. 73. "Sir John Mason to sir William Cecil, that he fears his young landlord, Spelman, has intentions of turning him out of his house, which will be disagreeable; hopes therefore sir William C. will speak in his behalf." Feb. 4. 1556. Id. 74. "Lord Stafford

Richard II., and the princes of the line of Lancaster. This energy of parliament was quelled by the civil wars of the fifteenth century; and, whatever may have passed in debates within its walls, that have not been preserved, did not often display itself in any overt act under the first Tudors. To grant subsidies, which could not be raised by any other course, to propose statutes, which were not binding without their consent, to consider of public grievances, and procure their redress, either by law or petition to the crown, were their acknowledged constitutional privileges, which no sovereign or minister ever pretended to deny. For this end liberty of speech and free access to the royal person were claimed by the speaker as customary privileges, (though not quite, in his modern language, as undoubted rights,) at the commencement of every parliament. But the house of commons in Elizabeth's reign contained men of a bold and steady patriotism, well read in the laws and records of old time, sensible to the dangers of their country and abuses of government, and conscious that it was their privilege and their duty to watch over the common weal. This led to several conflicts between the crown and parliament; wherein, if the former often asserted the victory, the latter sometimes kept the field, and was left on the whole a gainer at close of the campaign.

It would surely be erroneous to conceive, that many acts of government in the four preceding reigns had not appeared at the time arbitrary and unconstitutional. If indeed we are not mistaken in judging them according to the ancient law, they must have been viewed in the same light by contemporaries, who were full as able to try them by that standard. But, to repeat what I have once before said, the extant documents from which we draw our knowledge of constitutional history under those reigns are so scanty, that instances even of a successful parliamentary resistance to measures of the crown may have left no memorial. The debates of parliament are not preserved, and very little is to be gained from such histories as the age produced. The complete barrenness of Elizabeth's chroniclers, Holingshed and Thin, as to every parliamentary or constitutional information, speaks of itself the jealous tone of her administration. Camden, writing to the next generation, though far from an ingenuous historian, is somewhat less under restraint. This forced silence of history is much more to be suspected after the use of printing and the reformation, than in the ages when monks compiled annals in their convents, reckless of the censure of courts, because independent of their permission. Grosser ignorance of public transactions is undoubtedly found in the chronicles of the middle ages; but far less of that deliberate mendacity, or of that insidious suppression, by which fear, and flattery, and hatred, and thirst of gain have, since the invention of printing, corrupted so much of historical literature throughout Europe. We begin however to find in Elizabeth's reign more copious and unquestionable documents for parliamentary history. The regular journals indeed are partly lost; nor would those which remain give us

to lord Burleigh, to further a match between a certain rich citizen's daughter and his son; he requests lord B. to appoint the father to meet him (lord Stafford) some day at his house, 'where I will in a few words make him so reasonable an offer as I trust he will not disallow.'" lxviii. 20. "Lady Zouch to lord Burleigh, for his friendly interposition to reconcile lord Zouch her husband, who had forsaken her through jealousy." 1593. lxxiv. 72.

a sufficient insight into the spirit of parliament, without the aid of other sources. But a volume called sir Simon D'Ewes's journal, part of which is copied from a manuscript of Heywood Townsend, a member of all parliaments from 1580 to 1601, contains minutes of the most interesting debates as well as transactions, and for the first time renders us acquainted with the names of those who swayed an English house of commons.[1]

There was no peril more alarming to this kingdom during the queen's reign than the precariousness of her life,—a thread whereon its tranquillity, if not its religion and independence was suspended. Hence the commons felt it an imperious duty not only to recommend her to marry, but, when this was delayed, to solicit that some limitations of the crown might be enacted, in failure of her issue. The former request she evaded without ever manifesting much displeasure, though not sparing a hint, that it was a little beyond the province of parliament. Upon the last occasion, indeed, that it was preferred, namely by the speaker in 1575, she gave what from any other woman must have appeared an assent, and almost a promise. But about declaring the succession she was always very sensible. Through a policy not perhaps entirely selfish, and certainly not erroneous on selfish principles, she was determined never to pronounce among the possible competitors for the throne. Least of all could she brook the intermeddling of parliament in such a concern. The commons first took up this business in 1562, when there had begun to be much debate in the nation about the opposite titles of the queen of Scots and lady Catherine Grey; and especially in consequence of a dangerous sickness the queen had just experienced, and which is said to have been the cause of summoning parliament. Their language is wary, praying her only by "proclamation of certainty already provided, if any such be," alluding to the will of Henry VIII., "or else by limitations of certainty, if none be, to provide a most gracious remedy in this great necessity[2];" offering at the same time to concur in provisions to guarantee her personal safety against any one who might be limited in remainder. Elizabeth gave them a tolerably courteous answer, though not without some intimation of her dislike to this address.[3] But at their next meeting, which was not till 1566, the hope of her own marriage having grown fainter, and the circumstances of the kingdom still more powerfully demanding some security, both houses of parliament united, with a boldness of which there had perhaps been no example for more than a hundred years, to overcome her repugnance. Some of her own council among the peers are said to have asserted in their places that the queen ought to be obliged to take a husband, or that a successor should be declared by parliament against her will. She was charged with a disregard to the state and to posterity. She

[1] Townsend's manuscript has been separately published; but I do not find that D'Ewes has omitted any thing of consequence.

[2] D'Ewes, p. 82. Strype, i. 258.; from whence it seems that Cecil was rather adverse to the proposal.

[3] D'Ewes, p. 85. The speech which Hume, on D'Ewes's authority, has put into the queen's mouth at the end of this session, is but an imperfect copy or abridgment of one which she made in 1566; as D'Ewes himself afterwards confesses. Her real answer to the speaker in 1563 is in Harrington's Nugæ Antiquæ, vol. i. p. 80.

would prove, in the uncourtly phrase of some sturdy members of the lower house, a step-mother to her country, as being seemingly desirous that England, which lived as it were in her, should rather expire with than survive her; that kings can only gain the affections of their subjects by providing for their welfare both while they lived and after their deaths; nor did any but princes hated by their subjects, or faint-hearted women, ever stand in fear of their successors. (Camden, p. 400.) But this great princess wanted not skill and courage to resist this unusual importunity of parliament. The peers, who had forgotten their customary respectfulness, were excluded the presence-chamber till they made their submission. She prevailed on the commons, through her ministers who sat there, to join a request for her marriage with the more unpalateable alternative of naming her successor; and when this request was presented, gave fair words, and a sort of assurance that their desires should by some means be fulfilled.[1] When they continued to dwell on the same topic in their speeches, she sent messages through her ministers, and at length a positive injunction through the speaker, that they should proceed no further in the business. The house however was not in a temper for such ready acquiescence as it sometimes displayed. Paul Wentworth, a bold and plain-spoken man, moved to know whether the queen's command and inhibition that they should no longer dispute of the matter of succession, were not against their liberties and privileges. This caused, as we are told, long debates, which do not appear to have terminated in any resolution. (D'Ewes, p. 128.) But, more probably having passed than we know at present, the queen, whose haughty temper and tenaciousness of prerogative were always within check of her discretion, several days after announced through the speaker, that she revoked her two former commandments; "which revocation," says the journal, "was taken by the house most joyfully, with hearty prayer and thanks for the same." At the dissolution of this parliament, which was perhaps determined upon in consequence of their steadiness, Elizabeth alluded in addressing them with no small bitterness to what had occurred.[2]

This is the most serious disagreement on record between the crown and the commons since the days of Richard II. and Henry IV. Doubtless the queen's indignation was excited by the nature of the subject her parliament ventured to discuss, still more than by her general disapprobation of their interference in matters of state. It was an endeavour to penetrate the great secret of her reign, in preserving which she conceived her peace, dignity, and personal safety to be bound up. There were, in her opinion, as she intimates in her speech at closing the session, some underhand movers of this intrigue, (whether of the Scots or Suffolk faction, does not appear), who were more to blame than even the speakers in parliament. And if, as Cecil seems justly to have thought, no limitations of the crown could at that time have been effected without much peril and inconvenience, we may find some apology for her warmth about their precipitation in a business, which, even according to our present constitutional usage, it

[1] The courtiers told the house, that the queen intended to marry, in order to divert them from their request that they would name her successor. Strype, vol. i. p. 494.

[2] Id. p. 116. Journals, 8th Oct., 25th Nov., 2d Jan.

would naturally be for the government to bring forward. It is to be collected from Wentworth's motion, that to deliberate on subjects affecting the commonwealth was reckoned, by at least a large part of the house of commons, one of their ancient privileges and liberties. This was not one which Elizabeth, however she had yielded for the moment in revoking her prohibition, ever designed to concede to them. Such was her frugality, that, although she had remitted a subsidy granted in this session, alleging the very honourable reason that, knowing it to have been voted in expectation of some settlement of its succession, she would not accept it when that implied condition had not been fulfilled, she was able to pass five years without again convoking her people. A parliament met in April, 1571, when the lord keeper Bacon, (D'Ewes, p. 141), in answer to the speaker's customary request for freedom of speech in the commons, said that "her majesty having experience of late of some disorder and certain offences, which though they were not punished, yet were they offences still, and so must be accounted, they would therefore do well to meddle with no matters of state, but such as should be propounded unto them, and to occupy themselves in other matters concerning the commonwealth."

The commons so far attended to this intimation, that no proceedings about the succession appear to have taken place in this parliament, except such as were calculated to gratify the queen. We may perhaps except a bill attainting the queen of Scots, which was rejected in the upper house. But they entered for the first time on a new topic, which did not cease for the rest of this reign to furnish matter of contention with their sovereign. The party called puritan, including such as charged abuses on the actual government of the church, as well as those who objected to part of its lawful discipline, had, not a little in consequence of the absolute exclusion of the catholic gentry, obtained a very considerable strength in the commons. But the queen valued her ecclesiastical supremacy more than any part of her prerogative. Next to the succession of the crown, it was the point she could least endure to be touched. The house had indeed resolved, upon reading a bill the first time for reformation of the common prayer, that petition be made to the queen's majesty for her license to proceed in it, before it should be farther dealt in. But Strickland, who had proposed it, was sent for to the council, and restrained from appearing again in his place, though put under no confinement. This was noticed as an infringement of their liberties. The ministers endeavoured to excuse his detention, as not intended to lead to any severity, nor occasioned by any thing spoken in that house, but on account of his introducing a bill against the prerogative of the queen, which was not to be tolerated. And instances were quoted of animadversion on speeches made in parliament. But Mr. Yelverton maintained that all matters not treasonable, nor too much to the derogation of the imperial crown, were tolerable there, where all things came to be considered, and where there was such fulness of power, as even the right of the crown was to be determined, which it would be high treason to deny. Princes were to have their prerogatives, but yet to be confined within reasonable limits. The queen could not of herself make laws, neither could she break them. This was the true voice of English liberty, not so

new to men's ears as Hume has imagined, though many there were who would not forfeit the court's favour by uttering it. Such speeches as the historian has quoted of sir Humphrey Gilbert, and many such may be found in the proceedings of this reign, are rather directed to intimidate the house by exaggerating their inability to contend with the crown, than to prove the law of the land to be against them. In the present affair of Strickland, it became so evident that the commons would at least address the queen to restore him, that she adopted the course her usual prudence indicated, and permitted his return to the house. But she took the reformation of ecclesiastical abuses out of their hands, sending word that she would have some articles for that purpose executed by the bishops under her royal supremacy, and not dealt in by parliament. This did not prevent the commons from proceeding to send up some bills to the upper house, where, as was natural to expect, they fell to the ground.[1]

This session is also remarkable for the first marked complaints against some notorious abuses, which defaced the civil government of Elizabeth.[2] A member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, and Mr. Bell said, that licences granted by the crown and other abuses galled the people, intimating also, that the subsidy should be accompanied by a redress of grievances. (D'Ewes, 158. Journ. 7 Apr.) This occasion of introducing the subject, though strictly constitutional, was likely to cause displeasure. The speaker informed them a few days after of a message from the queen to spend little time in motions, and make no long speeches. (Journ. 9 and 10 Apr.) And Bell, it appears, having been sent for by the council, came into the house "with such an amazed countenance, that it daunted all the rest," who for many days durst not enter on any matter of importance. (D'Ewes, 159.) It became the common whisper, that no one must speak against licences, lest the queen and council should be angry. And at the close of the session, the lord keeper severely reprimanded those audacious, arrogant, and presumptuous members who had called her majesty's grants and prerogatives in question, meddling with matters neither pertaining to them, nor within the capacity of their understanding. (D'Ewes, 151.)

The parliament of 1572 seemed to give evidence of their inheriting the spirit of the last by choosing Mr. Bell for their speaker.[3] But very little of it appeared in their proceedings. In their first short session, chiefly occupied by the business of the queen of Scots, the most remarkable circumstances are the following. The commons were desirous of absolutely excluding Mary from inheriting the crown, and even of taking away her life, and had prepared bills with this intent. But Elizabeth, constant to her mysterious policy, made one of her

[1] D'Ewes's, 156, &c. There is no mention of Strickland's business in the journal.

[2] Something of this sort seems to have occurred in the session of 1566, as may be inferred from the lord keeper's reproof to the speaker, for calling her majesty's letters patent in question. Id. 115.

[3] Bell, I suppose, had reconciled himself to the court, which would have approved no speaker chosen without its recommendation. There was always an understanding between this servant of the house and the government. Proofs or presumptions of this are not unfrequent. In Strype's Annals, vol. iv. p. 124. we find instructions for the speaker's speech in 1592, drawn up by lord Burleigh, as might very likely be the case on other occasions.

ministers inform them that she would neither have the queen of Scots enabled nor disabled to succeed, and willed that the bill respecting her should be drawn by her council: and that, in the mean time, the house should not enter on any speeches or arguments on that matter. (D'Ewes, 219.) Another circumstance worthy of note in this session is a signification, through the speaker, of her majesty's pleasure that no bills concerning religion should be received, unless they should be first considered and approved by the clergy, and requiring to see certain bills touching rites and ceremonies that had been read in the house. The bills were accordingly ordered to be delivered to her, with a humble prayer that, if she should dislike them, she would not conceive an ill opinion of the house, or of the parties by whom they were preferred. (Id. 213, 214.)

The submissiveness of this parliament was doubtless owing to the queen's vigorous dealings with the last. At their next meeting, which was not till Feb. 1575–6, Peter Wentworth, brother, I believe, of the person of that name before mentioned, broke out in a speech of uncommon boldness, against her arbitrary encroachments on their privileges. The liberty of free speech, he said, had in the two last sessions been so many ways infringed, that they were in danger, while they contented themselves with the name, of losing and foregoing the thing. It was common for a rumour to spread through that house, "the queen likes or dislikes such a matter; beware what you do." Messages were even sometimes brought down, either commanding or inhibiting, very injurious to the liberty of debate. He instanced that in the last session, restraining the house from dealing in matters of religion; against which and against the prelates he inveighed with great acrimony. With still greater indignation he spoke of the queen's refusal to assent to the attainder of Mary, and after surprising the house by the bold words, "none is without fault, no not our noble queen, but has committed great and dangerous faults to herself," went on to tax her with ingratitude and unkindness to her subjects in a strain perfectly free indeed from disaffection, but of more rude censure than any kings would put up with. (D'Ewes, 236.)

This direct attack upon the sovereign, in matters relating to her public administration, seems no doubt unparliamentary; though neither the rules of parliament in this respect, nor even the constitutional principle, were so strictly understood as at present. But it was part of Elizabeth's character to render herself extremely prominent, and, as it were, responsible in public esteem, for every important measure of her government. It was difficult to consider a queen as acting merely by the advice of ministers, who sometimes protested in parliament that they had laboured in vain to bend her heart to their councils. The doctrine that some one must be responsible for every act of the crown was yet perfectly unknown; and Elizabeth would have been the last to adopt a system so inglorious to monarchy. But Wentworth had gone to a length which alarmed the house of commons. They judged it expedient to prevent an unpleasant interference by sequestering their member, and appointing a committee of all the privy councillors in the house to examine him. Wentworth declined their authority, till they assured him that they sat as members of the commons, and not as

councillors. After a long examination, in which he not only behaved with intrepidity, but, according to his own statement, reduced them to confess the truth of all he advanced, they made a report to the house, who committed him to the Tower. He had lain there a month, when the queen sent word, that she remitted her displeasure towards him, and referred his enlargement to the house, who released him upon a reprimand from the speaker, and an acknowledgment of his fault upon his knees. (D'Ewes, 260.) In this commitment of Wentworth, it can hardly be said that there was any thing, as to the main point, by which the house sacrificed its acknowledged privileges. In later instances, and even in the reign of George the First, members have been committed for much less indecent reflections on the sovereign. The queen had no reason upon the whole to be ill-pleased with this parliament, nor was she in haste to dissolve it, though there was a long intermission of its sessions. The next was in 1581, when the chancellor, on confirming a new speaker, did not fail to admonish him that the house of commons should not intermeddle in any thing touching her majesty's person or estate, or church government. They were supposed to disobey this injunction, and fell under the queen's displeasure, by appointing a public fast on their own authority, though to be enforced on none but themselves. This trifling resolution, which showed indeed a little of the puritan spirit, passed for an encroachment on the supremacy, and was only expiated by a humble apology. (D'Ewes, 282.) It is not till the month of February 1587-8, that the zeal for ecclesiastical reformation overcame in some measure the terrors of power, but with no better success than before. A Mr. Cope offered to the house, we are informed, a bill and a book, the former anulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of common prayer contained in the latter. The speaker interposed to prevent this bill being read, on the ground that her majesty had commanded them not to meddle in this matter. Several members, however, spoke in favour of hearing it read, and the day passed in debate on this subject. Before they met again, the queen sent for the speaker, who delivered up to her the bill and book. Next time that the house sat, Mr. Wentworth insisted that some questions of his proposing should be read. These queries were to the following purport: Whether this council were not a place for any member of the same, freely and without control by bill or speech, to utter any of the griefs of this commonwealth? Whether there be any council that can make, add, or diminish from the laws of the realm, but only this council of parliament? Whether it be not against the orders of this council to make any secret or matter of weight, which is here in hand, known to the prince or any other, without consent of the house? Whether the speaker may overrule the house in any matter or cause in question? Whether the prince and state can continue and stand, and be maintained without this council of parliament, not altering the government of the state? These questions serjeant Pickering, the speaker, instead of reading them to the house, showed to a courtier, through whose means Wentworth was committed to the Tower. Mr. Cope, and those who had spoken in favour of his motion, underwent the same fate; and notwithstanding some notice taken of it in the house, it does

not appear that they were set at liberty before its dissolution, which ensued in three weeks. (D'Ewes, 410.) Yet the commons were so set on displaying an effectual hankering after reform, that they appointed a committee to address the queen for a learned ministry.

At the beginning of the next parliament, which met in 1588–9, the speaker received an admonition that the house were not to extend their privileges to any irreverent or misbecoming speech. In this session Mr. Davenport, we are informed by D'Ewes, moved neither for making of any new laws, nor for abrogating of any old ones, but for a due course of proceeding in laws already established, but executed by some ecclesiastical governors contrary both to their purport and the intent of the legislature, which he proposed to bring into discussion. So cautious a motion saved its author from the punishment which had attended Mr. Cope for his more radical reform; but the secretary of state reminding the house of the queen's express inhibition from dealing with ecclesiastical causes, declared to them by the chancellor at the commencement of the session (in a speech which does not appear), prevented them from taking any further notice of Mr. Davenport's motion. They narrowly escaped Elizabeth's displeasure in attacking some civil abuses. Sir Edward Hobby brought in a bill to prevent certain exactions made for their own profit by the officers of the exchequer. Two days after he complained, that he had been very sharply rebuked by some great personage, not a member of the house, for his speech on that occasion. But instead of testifying indignation at this breach of their privileges, neither he nor the house thought of any further redress than by exculpating him to this great personage, apparently one of the ministers, and admonishing their member not to repeat elsewhere any thing uttered in their debates. (D'Ewes, 433.) For the bill itself, as well as one intended to restrain the flagrant abuses of purveyance, they both were passed to the lords. But the queen sent a message to the upper house, expressing her dislike of them, as meddling with abuses, which, if they existed, she was both able and willing to repress; and this having been formally communicated to the commons, they appointed a committee to search for precedents in order to satisfy her majesty about their proceedings. They received afterwards a gracious answer to their address, the queen declaring her willingness to afford a remedy for the alleged grievances. (D'Ewes, 440. et post.)

Elizabeth, whose reputation for consistency, which haughty princes overvalue, was engaged in protecting the established hierarchy, must have experienced not a little vexation at the perpetual recurrence of complaints which the unpopularity of that order drew from every parliament. The speaker of that summoned in 1593 received for answer to his request of liberty of speech, that it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter; their privilege was aye or no. Wherefore, Mr. Speaker," continues the lord keeper Pickering, himself speaker in the parliament of 1588, "her majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the church and transforming the commonwealth, and do exhibit such bills to such purpose, that you receive them not, until

they be viewed and considered by those, who it is fitter should consider of such things, and can better judge of them." It seems not improbable, that this admonition, which indeed is in no unusual style for this reign, was suggested by the expectation of some unpleasing debate. For we read that the very first day of the session, though the commons had adjourned on account of the speaker's illness, the unconquerable Peter Wentworth, with another member, presented a petition to the lord keeper, desiring the lords of the upper house to join with them of the lower in imploring her majesty to entail the succession of the crown, for which they had already prepared a bill. This step, which may seem to us rather arrogant and unparliamentary, drew down, as they must have expected, the queen's indignation. They were summoned before the council, and committed to different prisons. (D'Ewes, 470.) A few days afterwards a bill for reforming the abuses of ecclesiastical courts was presented by Morice, attorney of the court of wards, and underwent some discussion in the house. (Id. 474. Townsend, 60.) But the queen sent for the speaker, and expressly commanded that no bill touching matters of state or reformation of causes ecclesiastical should be exhibited; and if any such should be offered, enjoining him on his allegiance not to read it. (Id. 62.) It was the custom at that time for the speaker to read and expound to the house all the bills that any member offered. Morice himself was committed to safe custody, from which he wrote a spirited letter to lord Burleigh, expressing his sorrow for having offended the queen, but at the same time his resolution "to strive," he says, "while his life should last, for freedom of conscience, public justice, and the liberties of his country."[1] Some days after a motion was made that, as some places might complain of paying subsidies, their representatives not having been consulted nor been present when they were granted, the house should address the queen to set their members at liberty. But the ministers opposed this, as likely to hurt those whose good was sought, her majesty being more likely to release them if left to her own gracious disposition. It does not appear, however, that she did so during the session, which lasted above a month. (D'Ewes, 470.) We read, on the contrary, in an undoubted authority, namely, a letter of Antony Bacon to his mother, that "divers gentlemen, who were of the parliament, and thought to have returned into the country after the end thereof, were stayed by her majesty's commandment, for being privy, as it is thought, and consenting to Mr. Wentworth's motion."[2] Some difficulty was made by this house of commons about their grant of subsidies, which was uncommonly large, though rather in appearance than truth, so great had been the depreciation of silver for some years past.[3]

The admonitions not to abuse freedom of speech, which had become almost as much matter of course as the request for it, were repeated in the ensuing parliaments of 1597 and 1601. Nothing more remarkable

[1] See the letter in Lodge's Illustrations, vol. iii. 34. Townsend says he was committed to sir John Fortescue's keeping, a gentler sort of imprisonment, p. 61.

[2] Birch's Memoirs of Elizabeth, i. 96.

[3] Strype has published, from lord Burleigh's manuscripts, a speech made in the parliament of 1589, against the subsidy then proposed. Annals, vol. iii. Append. 238. Not a word about this occurs in D'Ewes's Journal; and I mention it as an additional proof how little we can rely on negative inferences as to proceedings in parliament at this period.

occurs in the former of these sessions than an address to the queen against the enormous abuse of monopolies. The crown either possessed or assumed the prerogative of regulating almost all matters of commerce at its discretion. Patents to deal exclusively in particular articles, generally of foreign growth, but reaching in some instances to such important necessaries of life as salt, leather, and coal, had been lavishly granted to the courtiers, with little direct advantage to the revenue. They sold them to companies of merchants, who of course enhanced the price to the utmost ability of the purchaser. This business seems to have been purposely protracted by the ministers and the speaker, who, in this reign, were usually in the court's interest, till the last day of the session; when, in answer to his mention of it, the lord keeper said that the queen "hoped her dutiful and loving subjects would not take away her prerogative, which is the choicest flower in her garden, and the principal and head pearl in her crown and diadem; but would rather leave that to her disposition, promising to examine all patents, and to abide the touchstone of the law." (D'Ewes, 547.) This answer, though less stern than had been usual, was merely evasive; and in the session of 1601, a bolder and more successful attack was made on the administration than this reign had witnessed. The grievance of monopolies had gone on continually increasing; scarce any article was exempt from these oppressive patents. When the list of them was read over in the house, a member exclaimed, "Is not bread among the number?" The house seemed amazed: "Nay," said he; "if no remedy is found for these, bread will be there before the next parliament." Every tongue seemed now unloosed; each as if emulously descanting on the injuries of the place he represented. It was in vain for the courtiers to withstand this torrent. Raleigh, no small gainer himself by some monoplies, after making what excuse he could, offered to give them up. Robert Cecil, the secretary, and Bacon talked loudly of the prerogative, and endeavoured at least to persuade the house that it would be fitter to proceed by petition to the queen than by a bill. But it was properly answered, that nothing had been gained by petitioning in the last parliament. After four days of eager debate, and more heat than had ever been witnessed, this ferment was suddenly appeased by one of those well-timed concessions by which skilful princes spare themselves the mortification of being overcome. Elizabeth sent down a message that she would revoke all grants that should be found injurious by fair trial at law: and Cecil rendered the somewhat ambiguous generality of this expression more satisfactory by an assurance that the existing patents should all be repealed, and no more be granted. This victory filled the commons with joy, perhaps the more from being rather unexpected.[1] They addressed the queen with rapturous and hyperbolical acknowledgments, to which she answered in an affectionate strain, glancing only with an oblique irony at some of those movers in the debate, whom in her earlier and more vigorous years she would have keenly reprimanded. She repeated this a little more plainly at the close of the session, but still with com-

[1] Their joy and gratitude were rather premature, for her majesty did not revoke all of them; as appears by Rymer, xvi. 540., and Carte, iii. 712. A list of them, dated May, 1603, Lodge, iii. 159., seems to imply that they were still existing.

mendation of the body of the commons. So altered a tone must be ascribed partly to the growing spirit she perceived in her subjects, but partly also to those cares which clouded with listless melancholy the last scenes of her illustrious life.[1]

The discontent that vented itself against monopolies was not a little excited by the increasing demands which Elizabeth was compelled to make upon the commons in all her latter parliaments. Though it was declared in the preamble to the subsidy bill of 1593, that "these large and unusual grants, made to a most excellent princess on a most pressing and extraordinary occasion, should not at any time hereafter be drawn into a precedent," yet an equal sum was obtained in 1597, and one still greater in 1601. But money was always reluctantly given, and the queen's early frugality had accustomed her subjects to very low taxes; so that the debates on the supply in 1601, as handed down to us by Townsend, exhibit a lurking ill-humour, which would find a better occasion to break forth.

The house of commons, upon a review of Elizabeth's reign, was very far, on the one hand, from exercising those constitutional rights which have long since belonged to it, or even those which by ancient precedent they might have claimed as their own; yet, on the other hand, was not quite so servile and submissive an assembly as an artful historian has represented it. If many of its members were but creatures of power, if the majority were often too readily intimidated, if the bold and honest, but not very judicious Wentworths, were but feebly

[1] D'Ewes, 619. 644. &c. The speeches made in this parliament are reported more fully than usual by Townsend, from whose journal those of most importance have been transcribed by D'Ewes. Hume has given considerable extracts, for the sole purpose of inferring from this very debate on monopolies, that the royal prerogative was, according to the opinion of the house of commons itself, hardly subject to any kind of restraint. But the passages he selects are so unfairly taken, some of them being the mere language of courtiers, others separated from the context, in order to distort their meaning, that no one who compares them with the original can acquit him of extreme prejudice. The adulatory strain in which it was usual to speak of the sovereign often covered a strong disposition to keep down his authority. Thus when a Mr. Davies says in this debate: "God hath given that power to absolute princes, which he attributes to himself—Dixi quod dii estis;" it would have been seen, if Hume had quoted the following sentence, that he infers from hence, that justice being a divine attribute, the king can do nothing that is unjust, and consequently cannot grant licences to the injury of his subjects. Strong language was no doubt used in respect of the prerogative. But it is erroneous to assert, with Hume, that it came equally from the courtiers and country gentlemen, and was admitted by both. It will chiefly be found in the speeches of secretary Cecil, the official defender of prerogative, and of some lawyers. Hume, after quoting an extravagant speech ascribed to serjeant Heyle, that "all we have is her majesty's, and she may lawfully at any time take it from us; yea, she hath as much right to all our lands and goods as to any revenue of her crown," observes that Heyle was an eminent lawyer, a man of character. That Heyle was high in his profession is beyond doubt; but in that age, as has since, though from the change of times less grossly, continued to be the case, the most distinguished lawyers notoriously considered the court and country as plaintiff and defendant in a great suit, and themselves as their retained advocates. It is not likely however, that Heyle should have used the exact words imputed to him. He made, no doubt, a strong speech for prerogative, but so grossly to transcend all limits of truth and decency seems even beyond a lawyer seeking office. Townsend and D'Ewes write with a sort of sarcastic humour, which is not always to be taken according to the letter. D'Ewes, 433. Townsend, 205.

Hume proceeds to tell us, that it was asserted this session, that the speaker might either admit or reject bills in the house; and remarks, that the very proposal of it is a proof at what a low ebb liberty was at that time in England. There cannot be a more complete mistake. No such assertion was made; but a member suggested that the speaker might, as the consuls in the Roman senate used, appoint the order in which bills should be read; at which speech, it is added, some hissed. D'Ewes, 677. The present regularity of parliamentary forms, so justly valued by the house, was yet unknown; and the members called confusedly for the business they wished to have brought forward.

upported, when their impatience hurried them beyond their colleagues, there was still a considerable party sometimes carrying the house along with them, who with patient resolution and inflexible aim recurred in every session to the assertion of that one great privilege which their sovereign contested, the right of parliament to inquire into and suggest a remedy for every public mischief or danger. It may be remarked, that the ministers, such as Knollys, Hatton, and Robert Cecil, not only sat among the commons, but took a very leading part in their discussions; a proof that the influence of argument could no more be dispensed with than that of power. This, as I conceive, will never be the case in any kingdom where the assembly of the estates is quite subservient to the crown. Nor shall we put out of consideration the manner in which the commons were composed. Sixty-two members were added at different times by Elizabeth to the representation; as well from places which had in earlier times discontinued their franchise, as from those to which it was first granted;[1] a very large proportion of them petty boroughs, evidently under the influence of the crown or peerage. This had been the policy of her brother and sister, in order to counterbalance the country gentlemen, and find room for those dependents who had no natural interest to return them to parliament. The ministry took much pains with elections, of which many proofs remain.[2] The house accordingly was filled with placemen,

[1] Parl. Hist. 958. In the session of 1571, a committee was appointed to confer with the attorney and solicitor general about the return of burgesses from nine places which had not been represented in the last parliament. But in the end it was "ordered, by Mr. Attorney's assent, that the burgesses shall remain according to their returns; for that the validity of the charters of their towns is elsewhere to be examined, if cause be." D'Ewes, p. 156. 159.

D'Ewes observes that it was very common in former times, in order to avoid the charge of paying wages to their burgesses, that a borough which had fallen into poverty or decay, either got licence of the sovereign for the time being to be discharged from electing members, or discontinued it of themselves: but that of late the members for the most part bearing their own charges, many of those towns which had thus discontinued their privilege renewed it both in Elizabeth's reign and that of James, p. 80. This could only have been, it is hardly necessary to say, by obtaining writs out of Chancery for that purpose. As to the payment of wages, the words of D'Ewes intimate that it was not entirely disused. In the session of 1586, the borough of Grantham complained that Arthur Hall (whose name now appears for the last time) had sued them for wages due to him as their representative in the preceding parliament; alleging that, as well by reason of his negligent attendance and some other offences by him committed in some of its sessions, as of his promise not to require any such wages, they ought not to be charged; and a committee having been appointed to inquire into this, reported that they had requested Mr. Hall to remit his claim for wages, which he had freely done. D'Ewes, p. 417.

[2] Strype mentions letters from the council to Mildmay, sheriff of Essex, in 1559, about the choice of knights. Annals, vol. i. p. 32. And other instances of interference may be found in the Lansdowne and Harleian collections. Thus we read that a Mr. Copley used to nominate burgesses for Gatton, "for that there were no burgesses in the borough." The present proprietor being a minor in custody of the court of wards, lord Burleigh directs the sheriff of Surrey to make no return without instructions from himself; and afterwards orders him to cancel the name of Francis Bacon in his indenture, he being returned for another place, and to substitute Edward Brown. Harl. MSS. dcciii. 16.

I will introduce in this place, though not belonging to the present reign, a proof that Henry VIII. did not trust altogether to the intimidating effects of his despotism for the obedience of parliament, and that his ministers looked to the management of elections, as their successors have always done. Sir Robert Sadler writes to some one, whose name does not appear, to inform him that the duke of Norfolk had spoken to the king, who was well content he should be a burgess of Oxford; and that he should "order himself in the said *room* according to such instructions as the said duke of Norfolk should give him from the king:" if he is not elected at Oxford, the writer will recommend him to some of "my lord's towns of his bishopric of Winchester." Cotton MSS. Cleopatra E. iv. 178. Thus we see that the practice of our government has always been alike; and we may add the same of the nobility, who interfered with elections full as continually, and far more openly, than in modern times. The difference is, that a secretary of the treasury, or peer's agent, does that with some precaution of secrecy, which the council board, or peer himself, under the Tudors, did by express letters to the returning

civilians, and common lawyers grasping at preferment. The slavish tone of these persons, as we collect from the minutes of D'Ewes, is strikingly contrasted with the manliness of independent gentlemen. And as the house was by no means very fully attended, the divisions, a few of which are recorded, running from 200 to 250 in the aggregate, it may be perceived that the court, whose followers were at hand, would maintain a formidable influence. But this influence, however pernicious to the integrity of parliament, is distinguishable from that exertion of almost absolute prerogative, which Hume has assumed as the sole spring of Elizabeth's government, and would never be employed, till some deficiency of strength was experienced in the other.

D'Ewes has preserved a somewhat remarkable debate on a bill presented in the session of 1571, in order to render valid elections of non-resident burgesses. According to the tenor of the king's writ, confirmed by an act passed under Henry V., every city and borough was required to elect none but members of their own community. To this provision, as a seat in the commons' house grew more an object of general ambition, while many boroughs fell into comparative decay, less and less attention had been paid; till, the greater part of the borough representatives having become strangers, it was deemed by some expedient to repeal the ancient statute, and give a sanction to the innovation that time had wrought; while others contended in favour of the original usage, and seemed anxious to restore its vigour. It was alleged on the one hand by Mr. Norton, that the bill would take away all pretence for sending unfit men, as was too often seen, and remove any objection that might be started to the sufficiency of the present parliament, wherein, for the most part, against positive law, strangers to their several boroughs had been chosen: that persons able and fit for so great an employment ought to be preferred without regard to their inhabitancy; since a man could not be presumed to be the wiser for being a resident burgess: and that the whole body of the realm, and the service of the same, was rather to be respected than any private regard of place or person. This is a remarkable, and perhaps the earliest assertion, of an important constitutional principle, that each member of the house of commons is deputed to serve, not only for his constituents, but for the whole kingdom: a principle, which marks the distinction between a modern English parliament and such deputations of the estates as were assembled in several continental kingdoms; a principle to which the house of commons is indebted for its weight and dignity, as well as its beneficial efficiency, and which none but the servile worshippers of the populace are ever found to gainsay. It is obvious that such a principle could never obtain currency, or even be advanced on any plausible ground, until the law for the election of resident burgesses had gone into disuse.

officer; and that the operating motive is the prospect of a good place in the excise or customs for compliance, rather than that of lying some months in the Fleet for disobedience.

A late writer has asserted, as an undoubted fact, which "historic truth requires to be mentioned," that for the first parliament of Elizabeth, "five candidates were nominated by the court for each borough, and three for each county; and by the authority of the sheriffs, the members were chosen from among the candidates." Butler's Book of the Roman Catholic Church, p. 225. I never met with any tolerable authority for this, and believe it to be a mere fabrication; not certainly of Mr. Butler's who is utterly incapable of a wilful deviation from truth, but of some of those whom he too implicitly follows.

Those who defended the existing law, forgetting, as is often the case with the defenders of existing laws, that it had lost its practical efficacy, urged that the inferior ranks using manual and mechanical arts ought like the rest to be regarded and consulted with on matters which concerned them, and of which strangers could less judge. "We," said a member, "who have never seen Berwick or St. Michael's Mount, can but blindly guess of them, albeit we look on the maps that come from thence, or see letters of instruction sent; some one whom observation, experience, and due consideration of that country hath taught, can more perfectly open what shall in question thereof grow, and more effectually reason thereupon, than the skilfullest otherwise whatsoever." But the great mischief resulting from an abandonment of their old constitution would be the interference of noblemen with elections: lord's letters, it was said, would from henceforth bear the sway; instances of which, so late as the days of Mary, were alleged, though no one cared to allude particularly to any thing of a more recent date. Some proposed to impose a fine of forty pounds on any borough making its election on a peer's nomination. The bill was committed by a majority; but as no further entry appears in the journals, we may infer it to have dropped. (D'Ewes, 168.)

It may be mentioned, as not unconnected with this subject, that in the same session a fine was imposed on the borough of Westbury for receiving a bribe of four pounds from Thomas Long, "being a very simple man and of small capacity to serve in that place;" and the mayor was ordered to repay the money. Long, however, does not seem to have been expelled. This is the earliest precedent on record for the punishment of bribery in elections. (Journals, p. 88.)

We shall find an additional proof that the house of commons under the Tudor princes, and especially Elizabeth, was not so feeble and insignificant an assembly as has been often insinuated, if we look at their frequent assertion and gradual acquisition of those peculiar authorities and immunities which constitute what is called privilege of parliament. Of these the first, in order of time if not of importance, was their exemption from arrest on civil process during their session. Several instances occurred under the Plantagenet dynasty, where this privilege was claimed and admitted; but generally by means of a distinct act of parliament, or at least by a writ of privilege out of chancery. The house of commons for the first time took upon themselves to avenge their own injury in 1543, when the remarkable case of George Ferrers occurred. This is related in detail by Holingshed, and is perhaps the only piece of constitutional information we owe to him. Without repeating all the circumstances, it will be sufficient here to mention, that the commons sent their serjeant with his mace to demand the release of Ferrers, a burgess who had been arrested on his way to the house; that the gaolers and sheriffs of London having not only refused compliance, but ill-treated the serjeant, they compelled them, as well as the sheriffs of London, and even the plaintiff who had sued the writ against Ferrers, to appear at the bar of the house, and committed them to prison; and that the king, in the presence of the judges, confirmed in the strongest manner this assertion of privilege by the commons. It was however, so far at least as our knowledge

extends, a very important novelty in constitutional practice; not a trace occurring in any former instance on record, either of a party being delivered from arrest at the mere demand of the serjeant, or of any one being committed to prison by the sole authority of the house of commons. With respect to the first, "the chancellor," says Holingshed, "offered to grant them a writ of privilege, which they of the commons' house refused, being of a clear opinion, that all commandments and other acts proceeding from the nether house were to be done and executed by their serjeant without writ, only by show of his mace, which was his warrant." It might naturally seem to follow from this position, if it were conceded, that the house had the same power of attachment for contempt, that is, of committing to prison persons refusing obedience to lawful process, which our law attributes to all courts of justice, as essential to the discharge of their duties. The king's behaviour is worthy of notice: while he dexterously endeavours to insinuate, that the offence was rather against him than the commons, Ferrers happening to be in his service, he displays that cunning flattery towards them in their moment of exasperation, which his daughter knew so well how to employ.[1]

Such important powers were not likely to be thrown away, though their exertion might not always be thought expedient. The commons had sometimes recourse to a writ of privilege in order to release their members under arrest, and did not repeat the proceeding in Ferrer's case till that of Smalley, a member's servant, in 1575, whom they sent their serjeant to deliver. And this was only "after sundry reasons, arguments, and disputations," as the journal informs us; and what is more, after rescinding a previous resolution that they could find no precedents for setting at liberty any one in arrest except by writ of privilege. (Journals, Feb. 22nd and 27th.) It is to be observed, that the privilege of immunity extended to the menial servants of members, till taken away by the statute of George III. Several persons however were, at different times, under Mary and Elizabeth, committed by the house to the Tower, or to the custody of their own serjeant, for assaults on their members. (Hatsell, 73. 92. 119.) Smalley himself above mentioned, it having been discovered that he had fradulently procured this arrest, in order to get rid of the debt, was committed for a month, and ordered to pay the plaintiff one hundred pounds, which was possibly the amount of what he owed. (Hatsell, 90.) One also, who had served a subpœna out of the star-chamber on a member in the session of 1584, was not only put in confinement, but obliged to pay the party's expenses, before they would discharge him, making his humble submis-

[1] Holingshed, vol. iii. p. 824. (4to. edit.) Hatsell's Precedents, v. i. p. 53. Mr. Hatsell inclines too much, in my opinion, to depreciate the authority of this case, imagining that it was rather as the king's servant, than as a member of the house, that Ferrers was delivered. But though Henry artfully endeavours to rest it chiefly on this ground, it appears to me that the commons claim the privilege as belonging to themselves, without the least reference to this circumstance. If they did not always assert it afterwards, this negative presumption is very weak, when we consider how common it was to overlook or recede from precedents, before the constitution had been reduced into a system. Carte, vol. iii. p. 164., endeavours to discredit the case of Ferrers as an absolute fable; and certainly points out some inaccuracy as to dates; but it is highly improbable that the whole should be an invention. He returns to the subject afterwards, p. 541., and, with a folly almost inconceivable even in a Jacobite, supposes the puritans to have fabricated the tale, and prevailed on Holingshed to insert it in his history.

sion on his knees. (Hatsell, 97.) This is the more remarkable, inasmuch as the chancellor had but just before made answer to a committee deputed "to signify to him how by the ancient liberities of the house, the members thereof are privileged from being served with subpœnas," that "he thought the house had no such privilege, nor would he allow any precedents for it, unless they had also been ratified in the court of chancery." (Id. 96.) They continued to enforce this summary mode of redress with no objection, as far as appears, of any other authority, till, by the end of the queen's reign, it had become their established law of privilege that "no subpœna or summons for the attendance of a member in any other court ought to be served, without leave obtained or information given to the house; and that the persons who procured or served such process were guilty of a breach of privilege, and were punishable by commitment or otherwise, by the order of the house." (Id. 119.) The great importance of such a privilege was the security it furnished, when fully claimed and acted upon, against those irregular detentions and examinations by the council, and which, in despite of the promised liberty of speech, had, as we have seen, oppressed some of their most distinguished members. But it must be owned that by thus suspending all civil and private suits against themselves, the commons gave too much encouragement to needy and worthless men, who sought their walls as a place of sanctuary.

This power of punishment, as it were for contempt, assumed in respect of those who molested members of the commons by legal process, was still more naturally applicable to offences against established order committed by any of themselves. In the earliest record that is extant of their daily proceedings, the commons journal of the first parliament of Edward VI., we find on the 21st January, 1547–8, a short entry of an order that John Storie, one of the burgesses, shall be committed to the custody of the serjeant. The order is repeated the next day; on the next, articles of accusation are read against Storie. It is ordered on the following day, that he shall be committed prisoner to the Tower. His wife soon after presents a petition, which is ordered to be delivered to the Protector. On Feb. 20, letters from Storie in the Tower are read. These probably were not deemed satisfactory, for it is not till Mar. 2. that we have an entry of a letter from Mr. Storie in the Tower with his submission. And an order immediately follows, that "the king's privy council in the nether house shall humbly declare unto the lord protector's grace, that the resolution of the house is, that Mr. Storie be enlarged and at liberty, out of prison; and to require the king's majesty to forgive him his offences in this case towards his majesty and his council."

Storie was a zealous enemy of the Reformation, and suffered death for treason under Elizabeth. His temper appears to have been ungovernable; even in Mary's reign he fell a second time under the censure of the house for disrespect to the speaker. It is highly probable that his offence in the present instance was some ebullition of virulence against the changes in religion; for the first entry concerning him immediately follows the third reading of the bill that established the English liturgy. It is also manifest that he had to atone for language disrespectful to the Protector's government. as well as to the house

But it is worthy of notice, that the commons by their single authority commit their burgess first to their own officer, and next to the Tower: and that upon his submission they inform the Protector of their resolution to discharge him out of custody, recommending him to forgiveness as to his offence against the council, which, as they must have been aware, the privilege of parliament as to words spoken within its walls, if we are right in supposing such to have been the case, would extend to cover. It would be very unreasonable to conclude, that this is the first instance of a member's commitment by order of the house, the earlier journals not being in existence. Nothing indicates that the course taken was unprecedented. Yet on the other hand we can as little infer that it rested on any previous usage; and the times were just such, in which a new precedent was likely to be established. The right of the house, indeed, to punish its own members for indecent abuse of the liberty of speech, may be thought to result naturally from the king's concession of that liberty: and its right to preserve order in debate is plainly incident to that of debating at all.

In the subsequent reign of Mary, Mr. Copley incurred the displeasure of the house for speaking irreverent words of her majesty, and was committed to the serjeant at arms; but the despotic character of that government led the commons to recede in some degree from the regard to their own privileges they had shown in the former case. The speaker was directed to declare this offence to the queen, and to request her mercy for the offender. Mary answered, that she would well consider that request, but desired that Copley should be examined as to the cause of his behaviour. A prorogation followed the same day, and of course no more took place in this affair. (Journals, March 5 and 7, 1557–8.)

A more remarkable assertion of the house's right to inflict punishment on its own members occurred in 1581, and being much better known than those I have mentioned, has been sometimes treated as the earliest precedent. One Arthur Hall, a burgess for Grantham, was charged with having caused to be published a book against the present parliament, on account of certain proceedings in the last session, wherein he was privately interested, "not only reproaching some particular good members of the house, but also very much slanderous and derogatory to its general authority, power, and state, and prejudicial to the validity of its proceedings in making and establishing of laws." Hall was the master of Smalley, whose case has been mentioned above, and had so much incurred the displeasure of the house by his supposed privity to the fraud of his servant, that a bill was brought in and read a first time, the precise nature of which does not appear, but expressed to be against him and two of his servants. It seems probable, from these and some other passages in the entries that occur on this subject in the journal, that Hall in his libel had depreciated the house of commons as an estate of parliament, and especially in respect of its privileges, pretty much in the strain which the advocates of prerogative came afterwards to employ. Whatever share, therefore, personal resentment may have had in exasperating the house, they had a public quarrel to avenge against one of their members, who was led by pique to betray their ancient liberties. The vengeance of popular assemblies is not

easily satisfied. Though Hall made a pretty humble submission, they went on, by a unanimous vote, to heap every punishment in their power upon his head. They expelled him, they imposed a fine of five hundred marks upon him, they sent him to the Tower until he should make a satisfactory retractation. At the end of the session, he had not been released; nor was it the design of the commons that his imprisonment should then terminate; but their own dissolution, which ensued, put an end to the business.[1] Hall sat in some later parliaments. This is the leading precedent, as far as records show, for the power of expulsion, which the commons have ever retained without dispute of those who would most curtail their privileges. But in 1558 it had been put to the vote whether one outlawed and guilty of divers frauds should continue to sit, and carried in his favour by a very small majority; which affords a presumption that the right of expulsion was already deemed to appertain to the house. (Hatsell, 80.) They exercised it with no small violence in the session of 1585 against the famous Dr. Parry, who having spoken warmly against the bill inflicting the penalty of death on jesuits and seminary priests, as being cruel and bloody, the commons not only ordered him into the custody of the serjeant, for opposing a bill approved of by a committee, and directed the speaker to reprimand him upon his knees, but on his failing to make a sufficient apology, voted him no longer a burgess of that house. (D'Ewes, 341.) The year afterwards Bland, a currier, was brought to their bar for using what were judged contumelious expressions against the house for something they had done in a matter of little moment, and discharged on account of his poverty, on making submission, and paying a fine of twenty shillings.[2] In this case they perhaps stretched their power somewhat farther than in the case of Arthur Hall, who, as one of their body, might seem more amenable to their jurisdiction.

The commons asserted in this reign, perhaps for the first time, another most important privilege, the right of determining all matters relative to their own elections. Difficulties of this nature had in former times been decided in chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred, it is impossible to pronounce, on account of the unsatisfactory state of the rolls and journals of parliament under Edward IV., Henry VII., and Henry VIII. One remarkable entry, however, may be found in the reign of Mary, when a

[1] D'Ewes, 291. Hatsell, 93. The latter says, "I cannot but suspect, that there was some private history in this affair, some particular offence against the queen, with which we are unacquainted." But I believe the explanation I have given will be thought more to the purpose; and so far from having offended the queen, Hall seems to have had a patron in lord Burleigh, to whom he wrote many letters complaining of the commons, which are extant in the Lansdowne collection. He appears to have been a man of eccentric and unpopular character, and had already incurred the displeasure of the commons in the session of 1572, when he was ordered to be warned by the serjeant to appear at the bar "to answer for sundry lewd speeches used as well in the house as elsewhere." Another entry records him to have been "charged with seven several articles, but having humbly submitted himself to the house, and confessed his folly, to have been upon the question released with a good exhortation from the speaker." D'Ewes, 207. 212.

[2] D'Ewes, 366. This case, though of considerable importance, is overlooked by Hatsell, who speaks of that of Hall as the only one before the Long Parliament, wherein the commons have punished the authors of libels derogatory to their privileges. P. 127. Though he mentions only libels, certainly the punishment of words spoken is at least as strong an exercise of power.

committee is appointed "to inquire if Alexander Nowell, prebendary of Westminster, may be of the house;" and it is declared next day by them, that "Alexander Nowell, being prebendary in Westminster, and thereby having voice in the convocation-house, cannot be a member of this house; and so agreed by the house, and the queen's writ to be directed for another burgess in his place." (Journals, 1 Mary, p. 27.) Nothing farther appears on record till in 1586 the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was, that the chancellor had issued a second writ for this county, on the ground of some irregularity in the first return, and a different person had been elected. Some notice having been taken of this matter in the commons, the speaker received orders to signify to them her majesty's displeasure that "the house had been troubled with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the returns for the county of Norfolk, and to act therein according to justice and right." The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns; who reported the whole case with their opinion, that those elected on the first writ should take their seats, declaring farther, that they understood the chancellor and some of the judges to be of the same opinion; but that "they had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were members thereof. And though they thought very reverently of the said lord chancellor and judges, and knew them to be competent judges in their places; yet in this case they took them not for judges in parliament in this house: and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of this house, and not as allowed of by the said lord chancellor and judges. Which was agreed unto by the whole house." (D'Ewes, 393, etc.) This judicial control over their elections was not lost. A committee was appointed, in the session of 1589, to examine into sundry abuses of returns, among which is enumerated that some are returned for new places. (Id. 430.) And several instances of the house's deciding on elections occur in subsequent parliaments.

This tenaciousness of their own dignity and privileges was shown in some disagreements with the upper house. They complained to the lords in 1597, that they had received a message from the commons at their bar without uncovering, or rising from their places. But the lords proved, upon a conference, that this was agreeable to usage in the case of messages; though when bills were brought up from the lower house, the speaker of the lords always left his place, and received them at the bar. (Id. 539.) Another remonstrance of the commons, against having amendments to bills sent down to them on paper instead of parchment, seems a little frivolous, but serves to indicate a rising spirit, jealous of the superiority that the peers had arrogated. (Id. 596.) In one point more material, and in which they had more precedent on their side, the commons successfully vindicated their privilege. The lords

sent them a message, in the session of 1593, reminding them of the queen's want of a supply, and requesting that a committee of conference might be appointed. This was accordingly done, and sir Robert Cecil reported from it that the lords would consent to nothing less than a grant of three entire subsidies, the commons having shown a reluctance to give more than two. But Mr. Francis Bacon said, "he yielded to the subsidy, but disliked that this house should join with the upper house in granting it. For the custom and privilege of this house hath always been, first to make offer of the subsidies from hence, then to the upper house; except it were that they present a bill unto this house, with desire of our assent thereto, and then to send it up again." But the house were now so much awakened to their privilege of originating money-bills, that, in spite of all the exertions of the court, the proposition for another conference with the lords was lost on a division by 217 to 128.[1] It was by his opposition to the ministry in this session, that Bacon, who acted perhaps full as much from pique towards the Cecils, and ambitious attachment to Essex, as from any real patriotism, so deeply offended the queen, that, with all his subsequent pliancy, he never fully reinstated himself in her favour.[2]

That the government of England was a monarchy, bounded by law, far unlike the actual state of the principal kingdoms on the Continent, appears to have been so obvious and fundamental a truth, that flattery itself did not venture directly to contravene it. Hume has laid hold of a passage in Raleigh's preface to his History of the World, (written indeed a few years later than the age of Elizabeth), as if it fairly represented public opinion as to our form of government. Raleigh says that Philip II. "attempted to make himself not only an absolute monarch over the Netherlands, like unto the kings and sovereigns of England and France; but, Turk-like, to tread under his feet all their national and fundamental laws, privileges, and ancient rights." But who, that was really desirous of establishing the truth, would have brought Raleigh into court as an unexceptionable witness on such a question? Unscrupulous ambition taught men in that age who sought to win or regain the crown's favour, to falsify all law and fact in behalf of prerogative, as unblushingly as our modern demagogues exaggerate and distort the liberties of the people.[3] The sentence itself, if designed to

[1] D'Ewes, 486. Another trifling circumstance may be mentioned to show the rising spirit of the age. In the session of 1601, sir Robert Cecil having proposed that the speaker should *attend* the lord keeper about some matter, sir Edward Hobby took up the word in strong language, as derogatory to their dignity; and the secretary, who knew, as late ministers have done, that the commons are never so unmanageable as on such points of honour, made a proper apology. Id. 627.

[2] Birch's Memoirs, i. 97. 120. 152., &c. ii. 129. Bacon's Works, ii. 416. 435.

[3] Raleigh's Dedication of his Prerogative of Parliaments to James I. contains terrible things. 'The bonds of subjects to their kings should always be wrought out of iron, the bonds of kings unto subjects but with cobwebs."—"All binding of a king by law upon the advantage of his necessity, makes the breach itself lawful in a king; his charters and all other instruments being no other than the surviving witnesses of his unconstrained will." The object, however, of the book, is to persuade the king to call a parliament (about 1613), and we are not to suppose that Raleigh meant what he said. He was never very scrupulous about truth. In another of his tracts, entitled "The Prince; or, Thesaurus of State," he holds, though not without flattery towards James, a more reasonable language. "In every just state some part of the government is or ought to be impartial to the people; as in a kingdom, a voice or suffrage in making laws; and sometimes also in levying of arms, if the charge be great and the prince be forced to borrow help of his subjects, the matter rightly may be propounded to a parliament, that the tax may seem to have proceeded from themselves."

carry the full meaning that Hume assigns to it, is little better than an absurdity. For why were the rights and privileges of the Netherlands more fundamental than those of England? and by what logic could it be proved more Turk-like to impose the tax of the twentieth penny, or to bring Spanish troops into those provinces, in contravention of their ancient charters, than to transgress the Great Charter of this kingdom, with all those unrescinded statutes, and those traditional unwritten liberties, which were the ancient inheritance of its subjects? Or could any one, conversant in the slightest degree with the two countries, range in the same class of absolute sovereigns the kings of France and England? The arbitrary acts of our Tudor princes, even of Henry VIII., were trifling in comparison of the despotism of Francis I. and Henry II., who forced their most tyrannical ordinances down the throats of the parliament of Paris with all the violence of military usurpers. No permanent law had ever been attempted in England, nor any internal tax imposed, without consent of the people's representatives. No law in France had ever received such consent; nor had the taxes, enormously burthensome as they were in Raleigh's time, been imposed, for one hundred and fifty years past, by any higher authority than a royal ordinance. If a few nobler spirits had protested against the excessive despotism of the house of Valois; if La Boetie had drunk at the springs of classical republicanism; if Hottoman had appealed to the records of their freeborn ancestry that surrounded the throne of Clovis; if Languet had spoken in yet a bolder tone of a rightful resistance to tyranny;[1] if the jesuits and partisans of the League had cunningly attempted to win men's hearts to their faction by the sweet sounds of civil liberty, and the popular origin of politic rule,—yet these obnoxious paradoxes availed little with the nation, which, after the wild fanaticism of a rebellion arising wholly from religious bigotry had passed away, relapsed at once into its patient loyalty, its self-complacent servitude. But did the English ever recognise, even by implication, the strange parallels which Raleigh has made for their government with that of France, and Hume with that of Turkey? The language adopted in addressing Elizabeth was always remarkably submissive. Hypocritical adulation was so much among the vices of that age, that the want of it passed for rudeness. Yet Onslow, speaker of the parliament of 1566, being then solicitor-general, in addressing the queen, says: "By our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such as the prince can take money or other things, or do as he will at his own pleasure without order, but quietly to suffer his subjects to enjoy their own, without wrongful oppression; wherein other princes by their liberty do take as pleaseth them."[2]

[1] Le Contre Un of La Boetie, the friend of Montaigne, is as the title intimates, a vehement philippic against monarchy. It is subjoined to some editions of the latter's essays. The Franco-Gallia of Hottoman contains little more than extracts from Fredegarius, Aimoin, and other ancient writers, to prove the elective character and general freedom of the monarchy under the two first races. This made a considerable impression at the time, though the passages in question have been so often quoted since, that we are almost surprised to find the book so devoid of novelty. Hubert Languet's Vindiciæ contra Tyrannos, published under the name of Junius Brutus, is a more argumentative discussion of the rights of governors and their subjects.

[2] D'Ewes, p. 115. I have already adverted to Gardiner's resolute assertion of the law

In the first months of Elizabeth's reign, Aylmer, afterwards bishop of London, published an answer to a book by John Knox, against female monarchy, or, as he termed it, "Blast of the Trumpet against the Monstrous Regiment of Women;" which, though written in the time of Mary, and directed against her, was of course not acceptable to her sister. The answerer relies, among other arguments, on the nature of the English constitution, which, by diminishing the power of the crown, renders it less unfit to be worn by a woman. "Well," he

against the prince's single will, as a proof that, in spite of Hume's preposterous insinuations to the contrary, the English monarchy was known and acknowledged to be limited. Another testimony may be adduced from the words of a great protestant churchman. Archbishop Parker, writing to Cecil to justify himself for not allowing the queen's right to grant some dispensation in a case of marriage, says "he would not dispute of the queen's absolute power, or prerogative royal, how far her highness might go in following the Roman authority; but he yet doubted that if any dispensation should pass from her authority, to any subject, not avouchable by laws of the realm, made and established by herself and her three estates, whether that subject be in surety at all times afterwards: specially seeing there be parliament laws precisely determining cases of dispensations." Strype's Parker, 177.

Perhaps, however, there is no more decisive testimony to the established principles of limited monarchy in the age of Elizabeth, than a circumstance mentioned in Anderson's Reports, 154. The queen had granted to Mr. Richard Cavendish an office for issuing certain writs, and directed the judges to admit him to it, which they neglected (that is, did not think fit) to do. Cavendish hereupon obtained a letter from her majesty, expressing her surprise that he was not admitted according to her grant, and commanding them to sequester the profits of the office for his use, or that of any other to whom these might appear to be due, as soon as the controversy respecting the execution of the said office should be decided. It is plain that some other persons were in possession of these profits, or claimed a right therein. The judges conceived that they could not lawfully act according to the said letter and command, because through such a sequestration of the emoluments, those who claimed a right to issue the writs would be disseised of their freehold. The queen, informed that they did not obey the letter, sent another, under the sign-manual, in more positive language, ending in these words: "We look that you and every of you should dutifully fulfil our commandment herein, and these our letters shall be your warrant." 21st April, 1587. This letter was delivered to the justices in the presence of the chancellor and lord Leicester, who were commissioned to hear their answer, telling them also, that the queen had granted the patent on account of her great desire to provide for Cavendish. The judges took a little time to consult what should be said; and, returning to the lords, answered that they desired in all respects humbly to obey her majesty; but, as this case is, could not do so without perjury, which they well knew the queen would not require, and so went away. Their answer was reported to the queen, who ordered the chancellor, chief-justice of the king's bench, and master of the rolls, to hear the judges' reasons; and the queen's council were ordered to attend, when the queen's serjeant began to show the queen's prerogative to grant the issuing of writs, and showed precedents. The judges protested in answer, that they had every wish to assist her majesty to all her rights, but said that this manner of proceeding was out of course of justice; and gave their reasons, that the right of issuing these writs and fees incident to it was in the prothonotaries and others, who claimed it by freehold; who ought to be made to answer, and not the judges, being more interested therein. This was certainly a little feeble, but they soon recovered themselves. They were then charged with having neglected to obey these letters of the queen; which they confessed, but said that this was no offence or contempt towards her majesty, because the command was against the law of the land; in which case, they said, no one is bound to obey such command. When farther pressed, they said the queen herself was sworn to keep the laws as well as they; and that they could not obey this command without going against the laws directly and plainly, against their oaths, and to the offence of God, her majesty, the country, and commonwealth in which they were born and live: so that if the fear of God were gone from them, yet the examples of others, and the punishment of those who had formerly transgressed the laws, would remind them and keep them from such an offence. Then they cited the Spensers, and Thorp, a judge under Edward III., and precedents of Richard II.'s time, and of Empson, and the statutes, from Magna Charta, which show what a crime it is for judges to infringe the laws of the land; and thus, since the queen and the judges were sworn to observe them, they said that they would not act as was commanded in these letters.

All this was repeated to her majesty for her good allowance of the said reasons, and which her majesty, as I have heard, says the reporter, took well; but nothing farther was heard of the business. Such was the law and the government which Mr. Hume has compared to that of Turkey! It is almost certain, that neither James nor Charles would have made so discreet a sacrifice of their pride and arbitary temper; and in this self-command lay the great superiority of Elizabeth's policy.

says, "a woman may not reign in England! Better in England than any where, as it shall well appear to him that without affection will consider the kind of regimen. While I compare ours with other, as it is in itself, and not maimed by usurpation, I can find none either so good or so indifferent. The regimen of England is not a mere monarchy, as some for lack of consideration think, nor a mere oligarchy nor democracy, but a rule mixed of all these, wherein each one of these have or should have like authority. The image whereof, and not the image but the thing indeed, is to be seen in the parliament-house, wherein you shall find these three estates; the king or queen which representeth the monarchy, the noblemen which be the aristocracy, and the burgesses and knights the democracy. If the parliament use their privileges, the king can ordain nothing without them: if he do, it is his fault in usurping it, and their fault in permitting it. Wherefore, in my judgment, those that in king Henry VIII.'s days would not grant him that his proclamations should have the force of a statute, were good fathers of the country, and worthy commendation in defending their liberty. But to what purpose is all this? To declare that it is not in England so dangerous a matter to have a woman ruler, as men take it to be. For first it is not she that ruleth, but the laws, the executors whereof be her judges appointed by her, her justices and such other officers. Secondly, she maketh no statutes or laws, but the honourable court of parliament; she breaketh none, but it must be she and they together, or else not. If on the other part the regimen were such as all hanged on the king's or queen's will, and not upon the laws written; if she might decree and make laws alone without her senate; if she judged offences according to her wisdom, and not by limitation of statutes and laws; if she might dispose alone of war and peace; if, to be short, she were a mere monarch, and not a mixed ruler, you might peradventure make me to fear the matter the more, and the less to defend the cause."[1]

This passage notwithstanding some slight mistakes it contains, affords a proof of the doctrine current among Englishmen in 1559, and may perhaps be the less suspected, as it does not proceed from a skilful pen. And the quotations I have made in the last chapter from Hooker are evidence still more satisfactory, on account of the gravity and judiciousness of the writer, that they continued to be the orthodox faith in the later period of Elizabeth's reign. It may be observed, that those who speak of the limitations of the sovereign's power, and of the acknowledged liberties of the subject, use a distinct and intelligible language; while the opposite tenets are insinuated by means of vague and obscure generalities, as in the sentence above quoted from Raleigh. Sir Thomas Smith, secretary of state to Elizabeth, has bequeathed us a valuable legacy in his treatise on the commonwealth of England. But undoubtedly he evades, as far as possible, all great constitutional principles, and treats them if at all, with a vagueness and timidity very different from the tone of Fortescue. He thus concludes his chapter on the parliament: "This is the order and form of the highest and most authentical court of England, by virtue whereof all these things

[1] Harborowe of True and Faithful Subjects, 1559. Most of this passage is quoted by Dr M'Crie, in his Life of Knox, vol. i. note BB, to whom I am indebted for pointing it out.

be established whereof I spoke before, and no other means accounted available to make any new *forfeiture of life, members, or lands*, of any Englishman, where there was no law ordered for it before." (Commonwealth of England, b. ii. c. 3.) This leaves no small latitude for the authority of royal proclamations, which the phrase, I make no question, was studiously adopted in order to preserve.

There was unfortunately a notion very prevalent in the cabinet of Elizabeth, though it was not quite so broadly or at least so frequently promulgated as in the following reigns, that, besides the common prerogatives, of the English crown, which were admitted to have legal bounds, there was a kind of paramount sovereignty, which they denominated her absolute power, incident, as they pretended, to the abstract nature of sovereignty, and arising out of its primary office of preserving the state from destruction. This seemed analogous to the dictatorial power which might be said to reside in the Roman senate, since it could confer it upon an individual. And we all must, in fact, admit that self-preservation is the first necessity of commonwealths as well as persons, which may justify, in Montesquieu's poetical language, the veiling of the statues of liberty. Thus martial law is proclaimed during an invasion, and houses are destroyed in expectation of a siege. But few governments are to be trusted with this insidious plea of necessity, which more often means their own security than that of the people. Nor do I conceive that the ministers of Elizabeth restrained this pretended absolute power, even in theory, to such cases of overbearing exigency. It was the misfortune of the sixteenth century to see kingly power strained to the highest pitch in the two principal European monarchies. Charles V. and Philip II. had crushed and trampled the ancient liberties of Castile and Aragon. Francis I. and his successors, who found the work nearly done to their hands, had inflicted every practical oppression upon their subjects. These examples could not be without their effect on a government so unceasingly attentive to all that passed on the stage of Europe.[1] Nor was this effect confined to the court of Elizabeth. A king of England, in the presence of absolute sovereigns, or perhaps of their ambassadors, must always feel some degree of that humiliation with which a young man, in check of a prudent father, regards the careless prodigality of the rich heirs with whom he associates. Good sense and elevated views of duty may subdue the emotion; but he must be above human nature who is insensible to the contrast.

There must be few of my readers who are unacquainted with the animated sketch that Hume has delineated of the English constitution under Elizabeth. It has been partly the object of the present chapter to correct his exaggerated outline; and nothing would be more easy than to point at other mistakes into which he has fallen through prejudice, through carelessness, or through want of acquaintance with law. His capital and inexcusable fault in every thing he has written on our constitution is to have sought for evidence upon one side only of the

[1] Bodin says the English ambassador Dail (Dale) had assured him, not only that the king may assent to or refuse a bill as he pleases, but that il ne laisse pas d'en ordonner à son plaisir, et contre la volonté des estats, comme on a vu Henry VIII. avoir toujours usé de sa puissance souveraine. He admitted, however, that taxes could only be imposed in parliament. De la République, l. i. c. 8.

question. Thus the remonstrance of the judges against arbitrary imprisonment by the council is infinitely more conclusive to prove that the right of personal liberty existed, than the fact of its infringement can be to prove that it did not. There is something fallacious in the negative argument which he perpetually uses, that because we find no mention of any umbrage being taken at certain strains of prerogative, they must have been perfectly consonant to law. For even if nothing of this could be traced, which is not so often the case as he represents it, we should remember that when a constant watchfulness is exercised by means of political parties and a free press, a nation is seldom alive to the transgressions of a prudent and successful government. The character, which on a former occasion I have given of the English constitution under the house of Plantagenet, may still be applied to it under the line of Tudor, that it was a monarchy greatly limited by law, but retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. It may be added, that the practical exercise of authority seems to have been less frequently violent and oppressive, and its legal limitations better understood in the reign of Elizabeth, than for some preceding ages; and that sufficient indications had become distinguishable before its close, from which it might be gathered that the seventeenth century had arisen upon a race of men in whom the spirit of those who stood against John and Edward was rekindled with a less partial and a steadier warmth.[1]

CHAPTER VI.

ON THE ENGLISH CONSTITUTION UNDER JAMES I.

Quiet Accession of James—Question of his Title to the Crown—Legitimacy of the Earl of Hertford's Issue—Early Unpopularity of the King—Conduct towards the Puritans—Parliament convoked by an irregular Proclamation—Question of Fortescue and Goodwin's Election—Shirley's Case of Privilege—Complaints of Grievances—Commons' Vindication of themselves—Session of 1605*—Union with Scotland debated—Continual Bickerings between the Crown and Commons—Impositions on Merchandize without Consent of Parliament—Remonstrances against these in Session of* 1610*—Doctrine of King's absolute Power inculcated by Clergy—Articuli cleri—Cowell's Interpreter—Renewed Complaints of the Commons—Negotiation for giving up the feudal Revenue—Dissolution of Parliament—Character of James—Death of Lord Salisbury—Foreign Politics of the Government—Lord Coke's Alienation from the Court—Illegal Proclama*

[1] The misrepresentations of Hume as to the English constitution under Elizabeth, and the general administration of her reign, have been exposed, since the present chapter was written, by Mr. Brodie, in his History of the British Empire from the Accession of Charles I. to the Restoration, vol. i. c. 3. In some respects, Mr. B. seems to have gone too far in an opposite system, and to represent the practical course of government as less arbitrary than I can admit it to have been.

tions—Means resorted to in order to avoid the Meeting of Parliament—Parliament of 1614*—Undertakers—It is dissolved without passing a single Act—Benevolences—Prosecution of Peacham—Dispute about the Jurisdiction of the Court of Chancery—Case of Commendams—Arbitrary Proceedings in Star-Chamber—Arabella Stuart—Somerset and Overbury—Sir Walter Raleigh—Parliament of* 1621*—Proceedings against Mompesson and Lord Bacon—Violence in the Case of Floyd—Disagreement between the King and Commons—Their dissolution, after a strong Remonstrance—Marriage Treaty with Spain—Parliament of* 1624*—Impeachment of Middlesex.*—pp. 207–266.

IT might afford an illustration of the fallaciousness of political speculations, to contrast the hopes and inquietudes that agitated the minds of men concerning the inheritance of the crown during Elizabeth's lifetime, while not less than fourteen titles were idly or mischievously reckoned up, with the perfect tranquillity that accompanied the accession of her successor.[1] The house of Suffolk, whose claim was legally indisputable, if we admit the testament of Henry VIII. to have been duly executed, appears, though no public inquiry had been made into that fact, to have lost ground in popular opinion, partly though an unequal marriage of lord Beauchamp with a private gentleman's daughter, but still more from a natural disposition to favour the

[1] Father Persons, a subtle and lying jesuit, published in 1594, under the name of Doleman, a treatise entitled, "Conference about the next Succession to the Crown of England." This book is dedicated to lord Essex, whether from any hopes entertained of him, or, as was then supposed, in order to injure his fame and his credit with the queen. Sidney Papers, i. 357. Birch's Memoirs, i. 313. It is written with much art, to show the extreme uncertainty of the succession, and to perplex men's minds by multiplying the number of competitors. This however, is but the second part of his Conference, the aim of the first being to prove the right of commonwealths to depose sovereigns, much more to exclude the right heir, especially for want of true religion. "I affirm and hold," he says, "that for any man to give his help, consent, or assistance towards the making of a king whom he judgeth or believeth to be faulty in religion, and consequently would advance either no religion, or the wrong, if he were in authority, is a most grievous and damnable sin to him that doth it, of what side soever the truth be, or how good or bad soever the party be that is preferred." p. 216. He pretends to have found very few who favour the king of Scots' title; an assertion by which we may appreciate his veracity. The protestant party, he tells us, was wont to favour the house of Hertford, but of late have gone more towards Arabella, whose claim the lord Burleigh is supposed to countenance. p. 241. The drift of the whole is to recommend the infanta, by means of perverted history and bad law, yet ingeniously contrived to ensnare ignorant persons. In his former and more celebrated treatise, Leicester's Commonwealth, though he harps much on the embarrassments attending the succession, Persons argues with all his power in favour of the Scottish title, Mary being still alive, and James's return to the faith not desperate. Both these works are full of the mendacity generally and justly ascribed to his order: yet they are worthy to be read by any one who is curious about the secret politics of the queen's reign.

Philip II. held out assurances, that if the English would aid him in dethroning Elizabeth, a free parliament should elect any catholic sovereign at their pleasure, not doubting that their choice would fall on the infanta. He promised also to enlarge the privileges of the people, to give the merchants a free trade to the Indies, with many other flattering inducements. Birch's Memoirs, ii. 308. But most of the catholic gentry, it is just to observe, would never concur in the invasion of the kingdom by foreigners, preferring the elevation of Arabella, according to the pope's project. This difference of opinion gave rise, among other causes, to the violent dissensions of that party in the latter years of Elizabeth's reign: dissensions that began soon after the death of Mary, in favour of whom they were all united, though they could never afterwards agree on any project for the succession. Winwood's Memorials, i. 57. Lettres du Cardinal d'Ossat, ii. 501.

For the life and character of the famous father Persons, or Parsons, above mentioned, see Dodd's Church History, the Biographia Britannica, or Miss Aikin's James I., i. 360. Mr. Butler is too favourably inclined towards a man without patriotism or veracity. Dodd plainly thinks worse of him than he dares speak.

hereditary line rather than the capricious disposition of a sovereign long since dead, as soon as it became consistent with the preservation of the reformed faith. Leicester once hoped, it is said, to place his brother-in-law, the earl of Huntingdon, descended from the duke of Clarence, upon the throne; but this pretension had been entirely forgotten. The more intriguing and violent of the catholic party, after the death of Mary, entertaining little hope that the king of Scots would abandon the principles of his education, sought to gain support to a pretended title in the king of Spain, or his daughter the infanta, who afterwards married the archduke Albert, governor of the Netherlands. Others, abhorring so odious a claim, looked to Arabella Stuart, daughter of the earl of Lennox, younger brother of James's father, and equally descended from the stock of Henry VII., sustaining her manifest defect of primogeniture by her birth within the realm, according to the principle of law that excluded aliens from inheritance. But this principle was justly deemed inapplicable to the crown. Clement VIII., who had no other view than to secure the re-establishment of the catholic faith in England, and had the judgment to perceive that the ascendency of Spain would neither be endured by the nation, nor permitted by the French king, favoured this claim of Arabella, who, though apparently of the reformed religion, was rather suspected at home of wavering in her faith; and entertained a hope of marrying her to the cardinal Farnese, brother of the duke of Parma.[1] Considerations of public interest, however, unequivocally pleaded for the Scottish line; the extinction of long sanguinary feuds, and the consolidation of the British empire. Elizabeth herself, though by no means on terms of sincere friendship with James, and harassing him by intrigues with his subjects to the close of her life, seems to have always designed that he should inherit her crown. And the general expectation of what was to follow, as well from conviction of his right, as from the impracticability of any effectual competition, had so thoroughly paved the way, that the council's proclamation of the king of Scots excited no more commotion than that of an heir apparent.[2]

[1] D'Ossat, ubi suprà. Clement had, some years before, indulged the idle hope that France and Spain might unite to conquer England, and either bestow the kingdom on some Catholic prince, or divide it between themselves, as Louis XII. and Ferdinand had done with Naples in 1501; an example not very inviting to the French. D'Ossat, Henry's minister at Rome, pointed out the difficulties of such an enterprise, England being the greatest naval power in the world, and the people warlike. The pope only replied, that the kingdom had been once conquered, and might be so again; and especially being governed by an old woman, whom he was ignorant enough to compare with Joanna II. of Naples. Vol. i. 399. Henry IV. would not even encourage the project of setting up Arabella, which he declared to be both unjust and chimerical. Mém. de Sully, l. 15. A knot of protestants were also busy about the interests of Arabella, or suspected of being so; Raleigh, Cobham, Northumberland, though perhaps the last was a catholic. Their intrigues occupy a great part of the letters of intriguers, Cecil and lord Henry Howard, in the Secret Correspondence with king James, published by sir David Dalrymple, vol. i. passim.

[2] The explicit declaration on her death-bed, ascribed to her by Hume and most other writers, that her kinsman the king of Scots should succeed her, is not confirmed by Carey, who was there at the time. "She was speechless when the council proposed the king of Scots to succeed her, but put her hand to her head as if in token of approbation." E. of Monmouth's Memoirs, p. 176. But her uniform conduct shows her intentions. See, however, D'Israeli's Curiosities of Literature, iii. 107.

It is impossible to justify Elizabeth's conduct towards James in his own kingdom. What is best to be said for it is, that his indiscretion, his suspicious intrigues at Rome and Madrid, the dangerous influence of his favourites, and the evident purpose of the court of Spain to make him its tool, rendered it necessary to keep a very strict watch over his proceedings. If she

The popular voice in favour of James was undoubtedly raised in consequence of a natural opinion, that he was the lawful heir to the throne. But this was only according to vulgar notions of right, which respect hereditary succession as something indefeasible. In point of fact, neither James I. nor any of his posterity were legitimate sovereigns, according to the sense which that word ought properly to bear. The house of Stuart no more came in by a lawful title than the house of Brunswick; but such a title, I mean, as the constitution and established laws of this kingdom had recognised. No private man could have recovered an acre of land without proving a better right than they could make out to the crown of England. What then had James to rest upon? What renders it absurd to call him and his children usurpers? He had that which the flatterers of his family most affected to disdain, the will of the people; not certainly expressed in regular suffrage, or declared election, but unanimously and voluntarily ratifying that which in itself could surely give no right, the determination of the late queen's council to proclaim his accession to the throne.

It is probable that what has been just said may appear rather paradoxical to those who have not considered this part of our history; yet it is capable of satisfactory proof. This proof consists of four propositions: 1. That a lawful king of England, with the advice and consent of parliament, may make statutes to limit the inheritance of the crown as shall seem fit;—2. That a statute passed in the 35th year of king Henry VIII. enabled that prince to dispose of the succession by his last will signed with own hand;—3. That Henry executed such a will, by which, in default of issue from his children, the crown was entailed upon the descendants of his younger sister Mary, duchess of Suffolk, before those of Margaret, queen of Scots;—4. That such descendants of Mary were living at the decease of Elizabeth.

Of these propositions, the two former can require no support; the first being one that it would be perilous to deny, and the second asserting a notorious fact. A question has however been raised with respect to the third proposition; for though the will of Henry, now in the chapter-house at Westminster, is certainly authentic, and is attested by many witnesses, it has been doubted whether the signature was made with his own hand, as required by the act of parliament. In the reign of Elizabeth, it was asserted by the queen of Scots' ministers, that the king being at the last extremity, some one had put a stamp for him to the instrument.[1] It is true, that he was in the latter part of his life accus-

excited the peers and presbyters of Scotland against their king, he was not behind her in some of the last years of her reign. It appears by a letter from the earl of Mar, in Dalrymple's Secret Correspondence, p. 2., that James had hopes of a rebellion in England in 1601, which he would have had no scruple in abetting. And in a letter from him to Tyrone, in the Lansdowne MSS. lxxxiv. 36., dated 22d Dec. 1597, when the latter was at least preparing for rebellion, though rather cautious, is full of expressions of favour, and of promises to receive his assistance thankfully at the queen's death. This letter being found in the collection once belonging to sir Michael Hicks, must have been in lord Burleigh's, and probably in Elizabeth's hands; it would not make her less inclined to instigate conspiracies across the Tweed. The letter is not an original, and may have been communicated by some one about the king of Scots in the pay of England.

[1] See Burnet, vol. i. App. 267., for secretary Lethington's letter to Cecil, where he tells a circumstantial story so positively, and so open, if false, to a contradiction it never received, that those who lay too much stress on this very equivocal species of presumption would, if the will had perished, have reckoned its forgery beyond question. The king's death approaching, he asserts, "some as well known to you as to me caused William Clarke, sometimes servant

tomed to employ a stamp instead of making his signature. Many impressions of this are extant; but it is evident on the first inspection, not only that the presumed autographs in the will (for there are two) are not like these impressions, but that they are not the impressions of any stamp, the marks of the pen being very clearly discernible. It is more difficult to pronounce that they may not be feigned; but such is not the opinion of some who are best acquainted with Henry's handwriting; and what is still more to the purpose, there is no pretence for setting up such a possibility, when the story of the stamp, as to which the partizans of Mary pretended to adduce evidence, appears so clearly to be a fabrication. We have therefore every reasonable ground to maintain, that Henry did duly execute a will, postponing the Scots line to that of Suffolk.

The fourth proposition is in itself undeniable. There were descendants of Mary, duchess of Suffolk, by her two daughters, Frances, second duchess of Suffolk, and Eleanor, countess of Cumberland. A story had indeed been circulated, that Charles Brandon, Duke of Suffolk, was already married to a lady of the name of Mortimer at the time of his union with the king's sister. But this circumstance is sufficiently explained in the treatise of Hales.[1] It is somewhat more questionable, from which of his two daughters we are to derive the hereditary stock. This depends on the legitimacy of lord Beauchamp son of the earl of Hertford by Catherine Grey. I have mentioned in another place the process before a commission appointed by Elizabeth, which ended in declaring that their marriage was not proved, and that their cohabitation had been illicit. The parties alleged themselves to have been married clandestinely in the earl of Hertford's house, by a minister whom they had never before seen, and of whose name they were ignorant, in the presence only of a sister of the earl, then deceased. This entire absence of testimony, and the somewhat improbable nature of the story, at least in appearance, may still perhaps leave a shade of doubt as to the reality of the marriage. Upon the other hand, it was unquestionable that their object must have been a legitimate union; and such a hasty and furtive ceremony as they asserted to have taken place, while it would, if sufficiently

to Thomas Heneage, to sign the supposed will with a stamp, for otherwise signed it was never;" for which he appeals to an attestation of the late lord Paget in Parliament, and requests the depositions of several persons now living to be taken. He proceeds to refer him "to the original will surmised to be signed with the king's own hand, that thereby it may most clearly and evidently appear by some differences, how the same was not signed with the king's hand, but stamped as aforesaid. And albeit it is used both as an argument and calumniation against my sovereign by some, that the said original hath been embezzled in queen Mary's time, I trust God will and hath reserved the same to be an instrument to relieve [prove] the truth, and to confound false surmises, that thereby the right may take place, notwithstanding the many exemplifications and transcripts, which being sealed with the great seal, do run abroad in England." Lesley, bishop of Ross, repeats the same story with some additions. Bedford's Hereditary Right, p. 197. A treatise of Hales, for which he suffered imprisonment, in defence of the Suffolk title under the will, of which there is a manuscript in the British Museum, Harl. MSS. 537., and which is also printed in the appendix to the book last quoted, leads me to conjecture, that the original will had been mislaid or rather concealed at that time. For he certainly argues on the supposition that it was not forthcoming, and had not himself seen it; but "he has been informed that the king's name is evidently written with a pen, though some of the strokes are unseen, as if drawn by a weak and trembling hand." Every one who has seen the will must bear witness to the correctness of this information. The reappearance of this very remarkable instrument was, as I conceive, after the Revolution; for Collier mentions that he had heard it was in existence; and it is also described in a note to the Acta Regia.

[1] Bedford's (Harbin's) Hereditary Right Asserted, p. 204.

proved, be completely valid, was necessary to protect them from the queen's indignation. They were examined separately upon oath to answer a series of the closest interrogatories, which they did with little contradiction, and a perfect agreement in the main; nor was any evidence worth mentioning adduced on the other side; so that, unless the rules of the ecclesiastical law are scandalously repugnant to common justice, their oaths entitled them to credit on the merits of the case.[1] The earl of Hertford, soon after the tranquil accession of James, having long abandoned all ambitious hopes, and seeking only to establish his children's legitimacy, and the honour of one who had been the victim of their unhappy loves, petitioned the king for a review of the proceedings, alleging himself to have vainly sought this at the hands of Elizabeth. It seems probable, though I have not met with any more distinct proof of it than a story in Dugdale, that he had been successful in finding the person who solemnized the marriage.[2] A commission of delegates was accordingly appointed to investigate the allegations of the earl's petition. But the jealousy that had so long oppressed this unfortunate family was not yet at rest. Questions seem to have been raised as to the lapse of time and other technical difficulties, which served as a pretext for coming to no determination on the merits.[3] Hertford, or rather his son, not long after endeavoured indirectly to bring forward the main question by means of a suit for some lands against lord Monteagle. This is said to have been heard in the court of wards, where a jury was empanelled to try the fact. But the law officers of the crown interposed to prevent a verdict, which, though it could not have been legally conclusive upon the marriage, would certainly have given a sanction to it in public opinion.[4] The house of Seymour was now compelled to seek a renewal of their honours by another channel. Lord Beauchamp, as he had uniformly

[1] A manuscript in the Cottonian library, Faustina, A. xi., written about 1562, in a very hostile spirit, endeavours to prove from the want of testimony, and from some variances in their depositions (not very material ones), that their allegations of matrimony could not be admitted, and that they had incurred an ecclesiastical censure for fornication. But another, which I have also found in the Museum, Harl. MSS. 6286, contains the whole proceedings and evidence, from which I have drawn the conclusion in the text. Their ignorance of the clergyman who performed the ceremony is not perhaps very extraordinary; he seems to have been one of those vagabond ecclesiastics, who, till the marriage act of 1752, were always ready to do that service for a fee.

[2] "Hereupon I shall add, what I have heard related from persons of great credit, which is, that the validity of this marriage was afterwards brought to a trial at the common law; when the minister who married them being present, and other circumstances agreeing, the jury (whereof John Digby of Coleshill, in com. War. esquire, was the foreman) found it a good marriage." Baronage of England, part ii. 369. Mr. Luders doubts the accuracy of Dugale's story; and I think it not unlikely that it is a confused account of what had happened in the court of wards.

[3] I derive this fact from a Cotton MS. Vitellius, C. xvi. 412., &c.; but the volume is much burned, and the papers confused with others relative to lord Essex's divorce. See as to the same suit, or rather perhaps that mentioned in the next note, Birch's Negotiations, p. 219., or Aikin's James I. i. 225.

[4] "The same day a great cause between the lord Beauchamp and Monteagle was heard in the court of wards, the main point whereof was to prove the lawfulness of E. of Hertford's marriage. The court sat until five of the clock in the afternoon, and the jury had a week's respite for the delivery of their verdict." Letter of sir E. Hoby to sir T. Edmonds, Feb. 10. 1606. "For my lord of Hertford's cause, when the verdict was ready to be given up, Mr. Attorney interposed himself for the king, and said that the land that they both strove for was the king's, and until his title were decided, the jury ought not to proceed; not doubting but the king will be gracious to both lords. But thereby both land and legitimation remain undecided." The same to the same, Mar. 7. Sloane MSS. 4176.

been called, took a grant of the barony of Beauchamp, and another of the earldom of Hertford, to take effect upon the death of the earl, who is not denominated his father in the patent.[1] But after the return of Charles II., in the patent restoring this lord Beauchamp's son to the dukedom of Somerset, he is recited to be heir male of the body of the first duke by his wife Anne, which establishes (if the recital of a private act of parliament can be said to establish any thing) the validity of the disputed marriage. (Luders, ubi suprà.)

The descent from Eleanor, the younger daughter of Mary Brandon, who married the earl of Cumberland, is subject to no difficulties. She left an only daughter, married to the earl of Derby, from whom the claim devolved again upon females, and seems to have attracted less notice during the reign of Elizabeth than some others much inferior in plausibility. If any should be of opinion that no marriage was regularly contracted between the earl of Hertford and Lady Catherine Grey, so as to make their children capable of inheritance, the title to the crown, resulting from the statute of 35 H. 8. and the testament of that prince, will have descended, at the death of Elizabeth, on the issue of the countess of Cumberland.[2] In neither case could the house of Stuart have a lawful claim. But I may, perhaps, have dwelled too long on a subject which, though curious and not very generally understood, can be of no sort of importance, except as it serves to cast ridicule upon those notions of legitimate sovereignty and absolute right, which it was once attempted to set up as paramount even to the great interests of a commonwealth.

There is much reason to believe, that the consciousness of this defect in his parliamentary title put James on magnifying, still more than from his natural temper he was prone to do, the inherent rights of primogenitary succession, as something indefeasible by the legislature; a doctrine which, however it might suit the schools of divinity, was in diametrical opposition to our statutes.[3] Through the servile

[1] Dugdale's Baronage. Luders' Essay on the right of succession to the Crown in the Reign of Elizabeth. This ingenious author is, I believe, the first who has taken the strong position as to the want of legal title to the house of Stuart which I have endeavoured to support. In the entertaining letters of Joseph Mede on the news of the day, Harl. MSS. 389., it is said that the king had thought of declaring Hertford's issue by lady Catherine Grey illegitimate in the parliament of 1621, and that lord Southampton's commitment was for having searched for proofs of their marriage. June 30. 1622.

[2] I have not adverted to one objection which some urged at the time, as we find by Persons's treatises, Leicester's Commonwealth, and the Conference, to the legitimacy of the Seymours. Catherine Grey had been betrothed, or perhaps married, to lord Herbert, son of the earl of Pembroke, during the brilliant days of her family, at the close of Edward's reign. But on her father's fall, Pembroke caused a sentence of divorce to be pronounced, the grounds of which do not appear, but which was probably sufficient in law to warrant her subsequent union with Hertford. No advantage is taken of this in the proceedings, which seems to show that there was no legal bond remaining between the parties. Camden says she was divorced from lord Herbert, "being so far gone with child, as to be very near her time." But from her youth at the time, and the silence of all other writers, I conclude this to be unworthy of credit.

The representative of the title of Mary Brandon, duchess of Suffolk, that is, the person on whom the claim has descended, according to the rules which determine the succession of the crown, on the supposition that Hertford was duly married to Catherine Grey, is the present duchess of Buckingham; upon the contrary supposition, the marquis of Stafford. This is, of course, if we may take for granted the accuracy of common books of genealogy.

[3] Bolingbroke is of this opinion, considering the act of recognition as "the æra of hereditary right, and of all those exalted notions concerning the power of prerogative of kings and the sacredness of their persons." Dissertation on Parties, Letter II.

spirit of those times, however, it made a rapid progress; and, interwoven by cunning and bigotry with religion, became a distinguishing tenet of the party who encouraged the Stuarts to subvert the liberties of the kingdom. In James's proclamation on ascending the throne, he set forth his hereditary right in pompous and perhaps unconstitutional phrases. It was the first measure of parliament to pass an act of recognition, acknowledging that, immediately on the decease of Elizabeth, "the imperial crown of the realm of England did by inherent birthright, and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully, next and sole heir of the blood royal of this realm." (Stat. 1 Jac. c. 1.) The will of Henry VIII. it was tacitly agreed by all parties to consign to oblivion: and this most wisely, not on the principles which seem rather too much insinuated in this act of recognition, but on such substantial motives of public expediency, as it would have shown an equal want of patriotism and of good sense for the descendants of the house of Suffolk to have withstood.

James left a kingdom where his authority was incessantly thwarted, and sometimes openly assailed, for one wherein the royal prerogative had for more than a century been strained to a very high pitch, and where there had not occurred for above thirty years the least appearance of rebellion and hardly of tumult. Such a posture of the English commonwealth, as well as the general satisfaction testified at his accession, seemed favourable circumstances to one who entertained, with less disguise if not with more earnestness than most other sovereigns, the desire of reigning with as little impediment as possible to his own will. Yet some considerations might have induced a prince who really possessed the king-craft wherein James prided himself, to take his measures with caution. The late queen's popularity had remarkably abated during her last years.[1] It is a very common delusion of royal personages to triumph in the people's dislike of those into whose place they expect shortly to come, and to count upon the most transitory of possessions, a favour built on hopes that they cannot realize, and discontents that they will not assuage. If Elizabeth lost a great deal of that affection her subjects had entertained for her, this may be ascribed, not so much to Essex's death, though that no doubt had its share, as to weightier taxation, to some oppressions of her government, and above all to her inflexible tenaciousness in every point of ecclesiastical discipline. It was the part of a prudent successor to preserve an undeviating economy, to remove without repugnance or delay the irritations of monopolies and purveyance, and to remedy those alleged abuses in the church, against which the greater and stronger part of the nation had so long and so loudly raised its voice.

[1] This is confirmed by a curious little tract in the British Museum, Sloane MSS. 827., containing a short history of the queen's death, and new king's accession. It affords a good contemporary illustration of the various feelings which influenced men at this crisis, and is written in a dispassionate manner. The author ascribes the loss of Elizabeth's popularity to the impoverishment of the realm, and to the abuses which prevailed. Carte says, "foreigners were shocked on James's arrival at the applause of the populace who had professed to adore the late queen, but in fact she had no huzzas after Essex's execution. She was in four days' time as much forgot as if she had never existed, by all the world, and even by her own servants." Vol. iii. p. 707. This is exaggerated, and what Carte could not know; but there is no doubt that the generality were glad of a change.

The new king's character, notwithstanding the vicinity of Scotland, seems to have been little understood by the English at his accession. But he was not long in undeceiving them, if it be true that his popularity had vanished away before his arrival in London.[1] The kingdom was full of acute wits and skilful politicians, quick enough to have seen through a less unguarded character than that of James. It was soon manifest that he was unable to wield the sceptre of the great princess whom he ridiculously affected to despise,[2] so as to keep under that rising spirit, which might perhaps have grown too strong even for her control. He committed an important error in throwing away the best opportunity that had offered itself for healing the wounds of the church of England. In his way to London, the malecontent clergy presented to him what was commonly called the Millenary Petition, as if signed by 1000 ministers, though the real number was not so great.[3] This petition contained no demand inconsistent with the established hierarchy, nor, as far as I am aware, what might not have been granted without inconvenience. James, however, who had not unnaturally taken an extreme disgust at the presbyterian clergy of his native kingdom, by whom his life had been perpetually harassed, showed no disposition to treat these petitioners with favour.[4] The bishops had promised him an obsequiousness to which he had been

[1] Carte, no foe surely to the house of Stuart, says, "By the time he reached London, the admiration of the intelligent world was turned into contempt." On this journey he gave a remarkable proof of his hasty temper and disregard of law, in ordering a pickpocket taken in the fact to be hanged without trial. The historian last quoted thinks fit to say in vindication, that "all felonies committed within the verge of the court are cognisable in the court of the king's household," referring to 33 H. 8. c. i. This act, however, contains no such thing; nor does any court appear to have been held. Though the man's notorious guilt might prevent any open complaint of so illegal a proceeding, it did not fail to excite observation. "I hear our new king," says sir John Harrington, "has hanged one man before he was tried; it is strangely done: now if the wind bloweth thus, why may not a man be tried before he has offended?" Nugæ Antiquæ, vol. i. p. 180.

Birch and Carte tell us, on the authority of the French ambassador's despatches, that on this journey he expressed a great contempt for women, suffering them to be presented on their knees, and indiscreetly censuring his own wife; that he offended the military men by telling them they might sheathe their swords, since peace was his object; that he showed impatience of the common people who flocked to see him while hunting, driving them away with curses, very unlike the affable manners of the late queen. This is confirmed by Wilson, in Kennet's Complete History, vol. ii. p. 667.

[2] Sully, being sent over to compliment James on his accession, persisted in wearing mourning for Elizabeth, though no one had done so in the king's presence, and he was warned that it would be taken ill; "dans une cour où il sembloit qu'on eût si fort affecté de mettre en oubli cette grande reine, qu'on n'y faisoit jamais mention d'elle, et qu'on évitoit même de prononcer son nom." Mém. de Sully, l. 14. James afterwards spoke slightingly to Sully of his predecessor and said that he had long ruled England through her ministers.

[3] It was subscribed by 825 ministers from twenty-five counties. It states, that neither as factious men desiring a popular party in the church, nor as schismatics aiming at the dissolution of the state ecclesiastical, they humbly desired redress of some abuses. Their objections were chiefly to the cap and surplice, the cross in baptism, baptism by women, confirmation, the ring in marriage, the reading of the Apocrypha, bowing at the name of Jesus, &c., to non-residence and incapable ministers, the commendams held by bishops, unnecessary excommunications, and other usual topics. Neal, p. 408. Fuller, part ii. p. 22.

[4] The puritans seem to have flattered themselves that James would favour their sect, on the credit of some strong assertions he had occasionally made of his adherence to the Scots kirk. Some of these were a good while before; but on quitting the kingdom he had declared that he left it in a state which he did not intend to alter. Neal, 406. James, however, was all his life rather a bold liar than a good dissembler. It seems strange that they should not have attended to his Basilicon Doron, printed three years before, though not for general circulation, wherein there is a passage quite decisive of his disposition towards the presbyterians and their scheme of polity. The Millenary Petition indeed did not go so far as to request any thing of that kind.

little accustomed, and a zeal to enhance his prerogative, which they afterwards too well displayed. His measures towards the nonconformist party had evidently been resolved upon, before he summoned a few of their divines to the famous conference at Hampton-court. In the accounts that we read of this meeting, we are alternately struck with wonder at the indecent and partial behaviour of the king, and at the abject baseness of the bishops, mixed, according to the custom of servile natures, with insolence towards their opponents.[1] It was easy for a monarch and eighteen churchmen to claim the victory, be the merits of their dispute what they might, over four abashed and intimidated adversaries.[2] A very few alterations were made in the church-service after this conference, but not of such moment as to reconcile probably a single minister to the established discipline. (Rymer, xvi. 565.) The king soon afterwards put forth a proclamation, requiring all ecclesiastical and civil officers to do their duty by enforcing conformity, and admonishing all men not to expect nor attempt any further alteration in the public service; for "he would neither let any presume that his own judgment, having determined in a matter of this weight, should be swayed to alteration by the frivolous suggestions of any light spirit, nor was he ignorant of the inconvenience of admitting innovation in things once settled by mature deliberation."[3] And he had already strictly enjoined the bishops to proceed against all their clergy who did not observe the prescribed order (Strype's Whitgift, 382.); a command which Bancroft, who about this time followed Whitgift in the primacy, did not wait to have repeated. But the most enormous outrage on the civil rights of these men was the commitment to prison of ten among those who had presented the Millenary Petition; the judges having declared in the star-chamber, that it was an offence fineable at discretion, and very near to treason and felony, as it tended to sedition and rebellion. (Neal, 432. Winwood, ii. 36.) By such beginnings did the house of Stuart indicate the course it would steer.

An entire year elapsed, chiefly on account of the unhealthiness of the season in London, before James summoned his first parliament. It

[1] Strype's Whitgift, p. 571. Collier, p. 673. Neal, p. 411. Fuller, part, ii. p. 7. State Trials, vol. ii. p. 69. Phœnix Britannicus, i. 141. Winwood, ii. 13. All these, except the last, are taken from an account of the conference published by Barlow, and probably more favourable to the king and bishops than they deserved. See what Harrington, an eye-witness, says in Nugæ Antiquæ, i. 181, which I would quote as the best evidence of James's behaviour, were the passage quite decent.

[2] Reynolds, the principal disputant on the puritan side, was nearly, if not altogether, the most learned man in England. He was censured by his faction for making a weak defence; but the king's partiality and intemperance plead his apology. He is said to have complained of unfair representation in Barlow's account. Hist. and Ant. of Oxford, ii. 293. James wrote a conceited letter to one Blake, boasting of his own superior logic and learning. Strype's Whitgift, Append. 239.

[3] Strype's Whitgift, 587. How desirous men not at all connected in faction with the puritans were of amendments in the church, appears by a tract of Bacon, written, as it seems, about the end of 1603, vol. i. p. 387.—He excepts to several matters of ceremony; the cap and surplice the ring in marriage, the use of organs, the form of absolution, lay-baptism, &c.; and inveighs against the abuse of excommunication, against non-residence and pluralities, the cath ex officio, the sole exercise of ordination and jurisdiction by the bishop, conceiving that the dean and chapter should always assent, &c. And, in his predominant spirit of improvement asks, "Why the civil state should be purged and restored by good and wholesome laws made every three or four years in parliament assembled, devising remedies as fast as time breedeth mischief: and contrariwise the ecclesiastical state should still continue upon the dregs of time, and receive no alteration now for these forty-five years or more?"

might perhaps have been more politic to have chosen some other city; for the length of this interval gave time to form a disadvantageous estimate of his administration, and to alienate beyond recovery the puritanical party. Libels were already in circulation, reflecting with a sharpness never before known on the king's personal behaviour, which presented an extraordinary contrast to that of Elizabeth.[1] The nation, it is easy to perceive, cheated itself into a persuasion, that it had borne that princess more affection than it had really felt, especially in her latter years; the sorrow of subjects for deceased monarchs being often rather inspired by a sense of evil than a recollection of good. James, however, little heeded the popular voice, satisfied with the fulsome and preposterous adulation of his court, and intent on promulgating certain maxims concerning the dignity and power of princes, which he had already announced in his discourse on the True Law of Free Monarchies, printed some years before in Scotland. In this treatise, after laying it down that monarchy is the true pattern of divinity, and proving the duty of passive obedience, rather singularly, from that passage in the book of Samuel where the prophet so forcibly paints the miseries of absolute power, he denies that the kings of Scotland owe their crown to any primary contract, Fergus, their progenitor, having conquered the country with his Irish; and advances more alarming tenets, as that the king makes daily statutes and ordinances enjoining such pains thereto as he thinks meet, without any advice of parliament or estates; that general laws made publicly in parliament may, by the king's authority, be mitigated or suspended upon causes only known to him; and that, "although a good king will frame all his actions to be according to the law, yet he is not bound thereto, but of his own will and for example-giving to his subjects." (King James's Works, p. 207.) These doctrines, if not absolutely novel, seemed peculiarly indecent, as well as dangerous, from the mouth of a sovereign. Yet they proceeded far more from James's self-conceit and pique against the republican spirit of presbyterianism than from his love of power, which (in its exercise I mean, as distinguished from its possession) he did not feel in so eminent a degree as either his predecessor or his son.

In the proclamation for calling together his first parliament, the king, after dilating, as was his favourite practice, on a series of rather common truths in very good language, charges all persons interested in the choice of knights for the shire to select them out of the principal knights or gentlemen within the county; and for the burgesses, that choice be made of men of sufficiency and discretion, without desire to please parents and friends, that often speak for their children or kindred; avoiding persons noted in religion for their superstitious blindness one way, or for their turbulent humour other ways. We do command, he says, that no bankrupts or outlaws be chosen, but men of known good behaviour and sufficient livelihood. The sheriffs are charged not to direct a writ to any ancient town being so ruined that there are not residents sufficient to make such choice, and of whom

[1] See one of the Somers Tracts, vol. ii. p. 144. entitled "Advertisements of a Loyal Subject drawn from the observation of the People's Speeches." This appears to have been written before the meeting of parliament. The French ambassadors, Sully and La Boderie, thought most contemptibly of the king. Lingard, vol. ix. p. 107. His own courtiers, as their private letters show, disliked and derided him.

such lawful election may be made. All returns are to be filed in chancery, and if any be found contrary to this proclamation, the same to be rejected as unlawful and insufficient, and the place to be fined for making it; and any one elected contrary to the purport, effect, and true meaning of this proclamation, to be fined and imprisoned. (Parliamentary History, i. 967.)

Such an assumption of control over parliamentary elections was a glaring infringement of those privileges which the house of commons had been pretty steadily and successfully asserting in the late reign. An opportunity very soon occurred of contesting this important point. At the election for the county of Buckingham, sir Francis Goodwin had been chosen in preference to sir John Fortescue, a privy councillor, and the writ returned into chancery. Goodwin having been some years before outlawed, the return was sent back to the sheriff, as contrary to the late proclamation; and, on a second election, sir John Fortescue was chosen. This matter being brought under the consideration of the house of commons, a very few days after the opening of the session, gave rise to their first struggle with the new king. It was resolved, after hearing the whole case, and arguments by members on both sides, that Goodwin was lawfully elected and returned, and ought to be received. The first notice taken of this was by the lords, who requested that this might be discussed in a conference between the two houses, before any other matter should be proceeded in. The commons returned for answer, that they conceived it not according to the honour of the house to give account of any of their proceedings. The lords replied, that having acquainted his majesty with the matter, he desired there might be a conference thereon between the two houses. Upon this message, the commons came to a resolution that the speaker with a numerous deputation of members should attend his majesty, and report the reasons of their proceedings in Goodwin's case. In this conference with the king, as related by the speaker, it appears that he had shown some degree of chagrin, and insisted that the house ought not to meddle with returns, which could only be corrected by the court of chancery; and that since they derived all matters of privilege from him and his grant, he expected they should not be turned against him. He ended by directing the house to confer with the judges. After a debate, which seems, from the minutes in the journals, to have been rather warm, it was unanimously agreed not to have a conference with the judges; but the reasons of the house's proceeding were laid before the king in a written statement or memorial, answering the several objections that his majesty had alleged. This they sent to the lords, requesting them to deliver it to the king, and to be mediators in behalf of the house for his majesty's satisfaction; a message in rather a lower tone than they had previously taken. The king sending for the speaker privately, told him that he was now distracted in judgment as to the merits of the case; and for his further satisfaction, desired and commanded, as an absolute king, that there should be a conference between the house and the judges. Upon this unexpected message, says the journal, there grew some amazement and silence. But at last one stood up and said: "The prince's command is like a thunderbolt; his command upon our allegiance like the roaring of a lion. To his command

there is no contradiction; but how or in what manner we should now proceed to perform obedience, that will be the question." (Commons' Journals, i. 166.) It was resolved to confer with the judges in presence of the king and council. In this second conference, the king, after some favourable expressions towards the house, and conceding that it was a court of record, and judge of returns, though not exclusively of the chancery, suggested that both Goodwin and Fortescue should be set aside, by issuing a new writ. This compromise was joyfully accepted by the greater part of the commons, after the dispute had lasted nearly three weeks.[1] They have been considered as victorious, upon the whole, in this contest, though they apparently fell short in the result of what they had obtained some years before. But no attempt was ever afterwards made to dispute their exclusive jurisdiction.[2]

The commons were engaged during this session in the defence of another privilege, to which they annexed perhaps a disproportionate importance. Sir Thomas Shirley, a member, having been taken in execution on a private debt before their meeting, and the warden of the Fleet prison refusing to deliver him up, they were at a loss how to obtain his release. Several methods were projected; among which, that of sending a party of members with the serjeant and his mace, to force open the prison, was carried on a division; but the speaker hinting that such a vigorous measure would expose them individually to prosecution as trespassers, it was prudently abandoned. The warden, though committed by the house to a dungeon in the Tower, continued obstinate, conceiving that by releasing his prisoner he should become answerable for the debt. They were evidently reluctant to solicit the king's interference; but aware at length that their own authority was insufficient, "the vice-chamberlain, according to a memorandum in the journals, was privately instructed to go to the king, and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up sir Thomas; not as petitioned for by the house, but as if himself thought it fit, out of his own gracious judgment." By this stratagem, if we may so term it, they saved the point of honour, and recovered their member.[3] The warden's apprehensions, however, of exposing himself to an action for the escape gave rise to a statute, which empowers the creditor to sue out a new execution against any one who shall be delivered by virtue of his privilege of parliament, after that shall have expired, and discharges from liability those out of whose custody such persons shall be delivered. This is the first legislative recognition of privilege. (1 Jac. i. c. 13.) The most important part of the whole is a proviso subjoined to the act, "That nothing therein contained shall extend to the diminishing of any punishment to be hereafter, by censure in parliament, inflicted upon any person who hereafter

[1] It appears that some of the more eager patriots were dissatisfied at the concession made by vacating Goodwin's seat, and said they had drawn on themselves the reproach of inconstancy and levity. "But the acclamation of the house was, that it was a testimony of our duty, and no levity." It was thought expedient, however, to save their honour, that Goodwin should send a letter to the speaker expressing his acquiescence. Commons' Journals, i. 168.

[2] Commons' Journals, 147. &c.; Parl. Hist. 997.; Carte, iii. 730. who gives, on this occasion, a review of the earlier cases where the house had entered on matters of election. See also a rather curious letter of Cecil in Winwood's Memorials, ii. 18., where he artfully endeavours to treat the matter as of little importance.

[3] Commons' Journals, page 155. &c. Parl. Hist. 1028. Carte, 734.

shall make or procure to be made any such arrest as is aforesaid." The right of commitment, in such cases at least, by a vote of the house of commons, is here unequivocally maintained.

It is not necessary to repeat the complaints of ecclesiastical abuses preferred by this house of commons, as by those that had gone before them. James, by siding openly with the bishops, had given alarm to the reforming party. It was anticipated that he would go farther than his predecessor, whose uncertain humour, as well as the inclinations of some of her advisers, had materially counterbalanced the dislike she entertained of the innovators. A code of new canons had recently been established in convocation with the king's assent, obligatory perhaps upon the clergy, but tending to set up an unwarranted authority over the whole nation; imposing oaths and exacting securities in certain cases from the laity, and aiming at the exclusion of nonconformists from all civil rights.[1] Against these canons, as well as various other grievances, the commons remonstrated in a conference with the upper house, but with little immediate effect.[2] They made a more remarkable effort in attacking some public mischiefs of a temporal nature, which, though long the theme of general murmurs, were closely interwoven with the ancient and undisputed prerogatives of the crown. Complaints were uttered, and innovations projected by the commons of 1604, which Elizabeth would have met with an angry message, and perhaps visited with punishment on the proposers. James, however, was not entirely averse to some of the projected alterations, from which he hoped to derive a pecuniary advantage. The two principal grievances were, purveyance and the incidents of military tenure. The former had been restrained by not less than thirty-six statutes, as the commons assert in a petition to the king; in spite of which the impressing of carts and carriages, and the exaction of victuals for the king's use, at prices far below the true value, and in quantity beyond what was necessary, continued to prevail under authority of commissions from the board of green cloth, and was enforced, in case of demur or resistance, by imprisonment under their warrant. The purveyors, indeed, are described as living at free quarters upon the country, felling woods without the owners' consent, and commanding labour with little or no recompense. (Bacon's Works, i. 624.; Journals, 190. 215.) Purveyance was a very ancient topic of remonstrance; but both the inadequate revenues of the crown, and a supposed dignity attached to this royal right of spoil, had prevented its abolition from being attempted. But the commons seemed still more to trench on the pride of our feudal monarchy, when they proposed to take away guardianship in chivalry; that lucrative tyranny, bequeathed by Norman conquerors, the custody

[1] By one of these canons, all persons affirming any of the thirty-nine articles to be erroneous are excommunicated *ipso facto;* consequently become incapable of being witnesses, of sueing for their debts, &c. Neal, 428. But the courts of law disregarded these *ipso facto* excommunications.

[2] Somers' Tracts, ii. 14.; Journals, 199. 235. 238.; Parl. Hist. 1067. It is here said, that a bill restraining excommunications passed into a law, which does not appear to be true, though James himself had objected to their frequency. I cannot trace such a bill in the journals beyond the committee, nor is it in the statute-book. The fact is, that the king desired the house to confer on the subject with the convocation, which they justly deemed unprecedented, and derogatory to their privileges; but offered to confer with the bishops, as lords of parliament. Journals, 173.

of every military tenant's estate until he should arrive at twenty-one, without accounting for the profits. This, among other grievances, was referred to a committee, in which Bacon took an active share. They obtained a conference on this subject with the lords, who refused to agree to a bill for taking guardianship in chivalry away, but offered to join in a petition for that purpose to the king, since it could not be called a wrong, having been patiently endured by their ancestors as well as themselves, and being warranted by the law of the land. In the end the lords advised to drop the matter for the present, as somewhat unseasonable in the king's first parliament. (Commons' Journals, 150, etc.)

In the midst of these testimonies of dissatisfaction with the civil and ecclesiastical administration, the house of commons had not felt much willingness to greet the new sovereign with a subsidy. No demand had been made upon them, far less any proof given of the king's exigencies; and they doubtless knew by experience, that an obstinate determination not to yield to any of their wishes would hardly be shaken by a liberal grant of money. They had even passed the usual bill granting tonnage and poundage for life, with certain reservations that gave the court offence, and which apparently they afterwards omitted. But there was so little disposition to do any thing further, that the king sent a message to express his desire that the commons would not enter upon the business of a subsidy, and assuring them that he would not take unkindly their omission. By this artifice, which was rather transparent, he avoided the not improbable mortification of seeing the proposal rejected. (Journals, 246.)

The king's discontent at the proceedings of this session, which he seems to have pretty strongly expressed in some speech to the commons, that has not been recorded, (Journals, 230.), gave rise to a very remarkable vindication, prepared by a committee at the house's command, and entitled "A Form of Apology and Satisfaction to be delivered to his Majesty," though such may not be deemed the most appropriate title. It contains a full and pertinent justification of all those proceedings at which James had taken umbrage, and asserts, with respectful boldness, and in explicit language, the constitutional rights and liberties of parliament. If the English monarchy had been reckoned as absolute under the Plantagenets and Tudors, as Hume has endeavoured to make it appear, the commons of 1604 must have made a surprising advance in their notions of freedom since the king's accession. Adverting to what they call the misinformation openly delivered to his majesty in three things; namely, that their privileges were not of right, but of grace only, renewed every parliament on petition; that they are no court of record, nor yet a court that can command view of records; that the examination of the returns of writs for knights and burgesses is without their compass, and belonging to the chancery: assertions, they say, "tending directly and apparently to the utter overthrow of the very fundamental privileges of our house, and therein of the rights and liberties of the whole commons of your realm of England, which they and their ancestors, from time immemorial, have undoubtedly enjoyed under your majesty's most noble progenitors;" and against which they expressly protest, as derogatory

in the highest degree to the true dignity and authority of parliament, desiring "that such their protestations might be recorded to all posterity;" they maintain, on the contrary, "1. That their privileges and liberties are their right and inheritance; no less than their very lands and goods. 2. That they cannot be withheld from them, denied or impaired, but with apparent wrong to the whole state of the realm. 3. That their making request, at the beginning of a parliament, to enjoy their privilege, is only an act of manners, and does not weaken their right. 4. That their house is a court of record, and has been ever so esteemed. 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of parliament, which, with his majesty's royal assent, gives law to other courts, but from other courts receives neither laws nor orders. 6. That the house of commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire." They aver that in this session the privileges of the house have been more universally and dangerously impugned than ever, as they suppose, since the beginnings of parliaments. That in regard to the late queen's sex and age, and much more upon care to avoid all trouble, which by wicked practice might have been drawn to impeach the quiet of his majesty's right in the succession, those actions were then passed over which they hoped in succeeding times to redress and rectify; whereas, on the contrary, in this parliament, not privileges, but the whole freedom of the parliament and realm had been hewed from them. "What cause," they proceed, "we, your poor commons, have to watch over our privileges is manifest in itself to all men. The prerogatives of princes may easily and do daily grow. The privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved; but being once lost, are not recovered but with much disquiet." They then enter in detail on the various matters that had arisen during the session,—the business of Goodwin's election, of Shirley's arrest, and some smaller matters of privilege to which my limits have not permitted me to allude. "We thought not," speaking of the first, "that the judges' opinion, which yet in due place we greatly reverence, being delivered what the common law was, which extends only to inferior and standing courts, ought to bring any prejudice to this high court of parliament, whose power being above the law is not founded on the common law, but have their rights and privileges peculiar to themselves." They vindicate their endeavours to obtain redress of religious and public grievances: "Your majesty would be misinformed," they tell him, "if any man should deliver that the kings of England have any absolute power in themselves, either to alter religion, which God defend should be in the power of any mortal man whatsoever, or to make any laws concerning the same, otherwise than as in temporal causes, by consent of parliament. We have and shall at all times by our oaths acknowledge, that your majesty is sovereign lord and supreme governor in both."[1] Such was the voice of the English commons in 1604, at the commencement of that great conflict

[1] Parl. Hist. 1030., from Petyt's Jus Parliamentarium, the earliest book, as far as I know, where this important document is preserved. The entry on the Journals, p. 243., contains only

for their liberties, which is measured by the line of the house of Stuart. But it is not certain that this apology was ever delivered to the king, though he seems to allude to it in a letter written to one of his ministers about the same time.[1]

The next session, which is remarkable on account of the conspiracy of some desperate men to blow up both houses of parliament with gunpowder on the day of their meeting, did not produce much worthy of our notice. A bill to regulate, or probably to suppress, purveyance was thrown out by the lords. The commons sent up another bill to the same effect, which the upper house rejected without discussion, by a rule then perhaps first established, that the same bill could not be proposed twice in one session.[2] They voted a liberal subsidy, which the king, who had reigned three years without one, had just cause to require. For though he had concluded a peace with Spain soon after his accession, yet the late queen had left a debt of 400,000*l.*, and other charges had fallen on the crown. But the bill for this subsidy lay a good while in the house of commons, who came to a vote that it should not pass till their list of grievances was ready to be presented. No notice was taken of these till the next session beginning in November, 1606, when the king returned an answer to each of the sixteen articles in which matters of grievance were alleged. Of these the greater part refer to certain grants made to particular persons in the nature of monopolies; the king either defending these in his answer, or remitting the parties to the courts of law to try their legality. The principal

the first paragraph. Hume and Carte appear to have been ignorant of it. It is just alluded to by Rapin.

It was remarked that the attendance of members in this session was more frequent than had ever been known, so that fresh seats were required. Journals, 141.

[1] "My faithful 3, such is now my misfortune, as I must be for this time secretary to the devil in answering your letters directed unto him. That the entering now into the matter of the subsidy should be deferred until the council's next meeting with me, I think no ways convenient, especially for three reasons. First, ye see it has bin already longest delayd of any thing, and yet yee see the lower house are ever the longer the further from it; and (as in every thing that concerns mee) delay of time does never turn them towards mee, but, by the contrary, every hour breedeth a new trick of contradiction amongst them, and every day produces new matter of sedition, so fertile are their brains in ever buttering forth venome. Next, the Parlt. is now so very near an end, as this matter can suffer no longer delay. And thirdly, if this be not granted unto before they receive my answer unto their petition, it needs never to be moved, for the will of man or angel cannot devise a pleasing answer to their proposition, except I should pull the crown not only from my own head, but also from the head of all those that shall succeed unto mee, and lay it down at their feet. And that freedom of uttering my thoughts, which no extremity, strait nor peril of my life could ever bereave mee of in time past, shall now remain with me, as long as the soul shall with the body. And as for the Reservations of the Bill of Tonnage and Poundage, yee of the Upper House must out of your Love and Discretion help it again or otherwise they will in this, as in all things else that concern mee, wrack both me and all my Posterity. Ye may impart this to little 10 and bigg Suffolk. And so Farewell from my wildernesse, wch I had rather live in (as God shall judge me) like an Hermite in this Forrest, than be a King over such a People as the pack of Puritans are that overrules the lower-house.

J. R."

"MS. penes autorem."

I cannot tell who is addressed in this letter by the numeral 3; perhaps the earl of Dunbar. By 10 we must doubtless understand Salisbury.

[2] Parl. Hist. Journals, 274. 278., &c. In a conference with the lords on this bill, Mr. Hare, a member, spoke so warmly, as to give their lordships offence, and to incur some reprehension. "You would have thought," says sir Thomas Hoby, in a manuscript letter in the museum, "that Hare and Hyde represented two tribunes of the people." But the commons resented this infringement on their privileges, and after quoting that Mr. Hare did not err in his employment in the committee with the lords, sent a message to inform the other house of their vote, and to request that they "would forbear hereafter any taxations and reprehensions in their conferences." Journals, 20th and 22nd Feb.

business of this third session, as it had been of the last, was James's favourite scheme of a perfect union between England and Scotland. It may be collected, though this was never explicitly brought forward, that his views extended to a legislative incorporation.[1] But in all the speeches on this subject, and especially his own, there is a want of distinctness as to the object proposed. He dwells continually upon the advantage of unity of laws, yet extols those of England as the best, which the Scots, as was evident, had no inclination to adopt. Wherefore then was delay to be imputed to our English parliament, if it waited for that of the sister kingom? And what steps were recommended towards this measure, that the commons can be said to have declined, except only the naturalization of the ante-nati, or Scots born before the king's accession to our throne, which could only have a temporary effect?[2] Yet Hume, ever prone to eulogize this monarch at the expense of his people, while he bestows merited praise on his speech in favour of the union, which is upon the whole a well-written and judicious performance, charges the parliament with prejudice, reluctance, and obstinacy. The code, as it may be called, of international hostility, those numerous statutes treating the northern inhabitants of this island as foreigners and enemies, were entirely abrogated. And if the commons, while both the theory of our own constitution was so unsettled, and its practice so full of abuse, did not precipitately give in to schemes that might create still further difficulty in all questions between the crown and themselves, schemes too which there was no imperious motive for carrying into effect at that juncture, we may justly consider it as an additional proof of their wisdom and public spirit. Their slow progress, however, in this favourite measure,

[1] Journals, 316. An acute historical critic doubts whether James aimed at an union of legislatures, though suggested by Bacon. Laing's Hist. of Scotland, iii. 17. It is certain that his own speeches on the subject do not mention this; nor do I know that it was ever distinctly brought forward by the government; yet it is hard to see how the incorporation could have been complete without it. Bacon not only contemplates the formation of a single parliament, but the alterations necessary to give it effect, vol. i. p. 638.; suggesting that the previous commission of lords of articles might be adopted for some though not for all purposes. This of itself was a sufficient justification for the dilatoriness of the English parliament. Nor were the common lawyers, who sat in the house, much better pleased with Bacon's schemes for remodelling all our laws. See his speech, vol. i. p. 654., for naturalizing the ante-nati. In this, he asserts the kingdom not to be fully peopled; "the territories of France, Italy, Flanders, and some parts of Germany, do in equal space of ground bear and contain a far greater quantity of people, if they were mustered by the poll;" and even goes on to assert the population to have been more considerable under the heptarchy; an absurdity, and which he could not believe.

[2] It was held by twelve judges out of fourteen, in Calvin's case, that the post-nati, or Scots born after the king's accession, were natural subjects of the king of England. This is laid down and irresistibly demonstrated, by Coke, then chief-justice, with his abundant legal learning. State Trials, vol. ii. 559.

It may be observed, that the highflying creed of prerogative mingled itself intimately with this question of naturalization; which was much argued on the monarchical principle of personal allegiance to the sovereign, as opposed to the half-republican theory that lurked in the contrary proposition. "Allegiance," says lord Bacon, "is of a greater extent and dimension than laws or kingdoms, and cannot consist by the laws merely, because it began before laws; it continueth after laws, and it is in vigour when laws are suspended and have not had their force." Id. 596. So lord Coke: "Whatsoever is due by the law or constitution of man may be altered; but natural legiance or obedience of the subject to the sovereign cannot be altered; ergo, natural allegiance or obedience to the sovereign is not due by the law or constitution of man." 652.

There are many doubtful positions scattered through the judgment in this famous case. Its surest basis is the long series of precedents, evincing that the natives of Jersey, Guernsey, Calais, Normandy and Guienne, while these countries appertained to the kings of England, though not in right of its crown, were never reputed aliens.

which, though they could not refuse to entertain it, they endeavoured to defeat by interposing delays and impediments, gave much offence to the king, which he expressed in a speech to the two houses, with the haughtiness, but not the dignity of Elizabeth. He threatened them to live alternately in the two kingdoms, or to keep his court at York; and alluded, with peculiar acrimony, to certain speeches made in the house, wherein probably his own fame had not been spared.[1] "I looked," he says, "for no such fruits at your hands, such personal discourses and speeches, which of all other, I looked you should avoid, as not beseeming the gravity of your assembly. I am your king; I am placed to govern you, and shall answer for your errors; I am a man of flesh and blood, and have my passions and affections as other men; I pray you, do not too far move me to do that which my power may tempt me unto." (Commons' Journals, 366.)[2]

It is most probable, as experience had shown, that such a demonstration of displeasure from Elizabeth would have ensured the repentant submission of the commons. But within a few years of the most unbroken tranquillity, there had been one of those changes of popular feeling, which a government is seldom observant enough to watch. Two springs had kept in play the machine of her administration, affection and fear; attachment arising from the sense of dangers endured, and glory achieved for her people, tempered, though not subdued, by the dread of her stern courage and vindictive rigour. For James not a particle of loyal affection lived in the hearts of the nation, while his easy and pusillanimous, though choleric disposition, had gradually diminished those sentiments of apprehension which royal frowns used to excite. The commons, after some angry speeches, resolved to make known to the king through the speaker their desire, that he would listen to no private reports, but take his information of the house's meaning from themselves; that he would give leave to such persons as he had blamed for their speeches to clear themselves in his hearing; and that he would by some gracious message make known his intention that they should deliver their opinions with full liberty, and without fear. The speaker next day communicated a slight but civil answer he had received from the king, importing his wish to preserve their privileges, especially that of liberty of speech. (Commons' Journals, p. 370.) This, however, did not prevent his sending a message a few days afterwards, commenting on their debates, and on some clauses they had introduced into the bill for the abolition of all hostile laws. (P. 377.) And a petition having been prepared by a committee under the house's direction for better execution of the laws against recusants, the speaker, on its being moved that the petition be

[1] The house had lately expelled sir Christopher Pigott for reflecting on the Scots nation in a speech. Journals, 13th Feb. 1607.

[2] The journals are full of notes of these long discussions about the union in 1604, 1606, 1607, and even 1610. It is easy to perceive a jealousy that the prerogative by some means or other would be the gainer. The very change of name to Great Britain was objected to. One said, we cannot legislate for Great Britain, p. 186. Another, with more astonishing sagacity, feared that the king might succeed, by what the lawyers call *remitter*, to the prerogatives of the British kings before Julius Cæsar, which would supersede Magna Charta, p. 185.

James took the title of king of Great Britain in the second year of his reign. Lord Bacon drew a well-written proclamation on that occasion. Bacon, i. 621. Rymer, xvi. 603. But it was, not long afterwards, abandoned.

read, said that his majesty had taken notice of the petition as a thing belonging to himself, concerning which it was needless to press him. This interference provoked some members to resent it, as an infringement of their liberties. The speaker replied that there were many precedents in the late queen's time, where she had restrained the house from meddling in politics of divers kinds. This, as a matter of fact, was too notorious to be denied. A motion was made for a committee "to search for precedents of ancient as well as later times, that do concern any messages from the sovereign magistrate, king or queen of this realm, touching petitions offered to the house of commons." The king now interposed by a second message, that, though the petition were such as the like had not been read in the house, and contained matter whereof the house could not properly take knowledge, yet if they thought good to have it read, he was not against the reading. And the commons were so well satisfied with this concession, that no further proceedings were had; and the petition, says the journal, was at length, with general liking, agreed to sleep. It contained some strong remonstrances against ecclesiastical abuses, and in favour of the deprived and silenced puritans, but such as the house had often before in various modes brought forward. (Commons' Journals, p. 384.)

The ministry betrayed, in a still more pointed matter, their jealousy of any interference on the part of the commons with the conduct of public affairs in a business of a different nature. The pacification concluded with Spain in 1604, very much against the general wish,[1] had neither removed all grounds of dispute between the governments, nor allayed the dislike of the nations. Spain advanced in that age the most preposterous claims to an exclusive navigation beyond the tropic, and to the sole possession of the American continent; while the English merchants, mindful of the lucrative adventures of the queen's reign, could not be restrained from trespassing on the rich harvest of the Indies by contraband and sometimes piratical voyages. These conflicting interests led of course to mutual complaints of maritime tyranny and fraud; neither likely to be ill founded, where the one party was as much distinguished for the despotic exercise of vast power, as the other by boldness and cupidity. It was the prevailing bias of the king's temper to keep on friendly terms with Spain, or rather to court her with undisguised and impolitic partiality.[2] But this so much thwarted the prejudices of his subjects, that no part perhaps of his administration had such a disadvantageous effect on his popularity. The merchants presented to the commons, in this session of 1607, a petition upon the grievances they sustained

[1] James entertained the strange notion that the war with Spain ceased by his accession to the throne. By a proclamation dated 23rd June, 1603, he permits his subjects to keep such ships as had been captured by them before the 24th April, but orders all taken since to be restored to the owners. Rymer, xvi. 516. He had been used to call the Dutch rebels, and was probably kept with difficulty by Cecil from displaying his partiality still more outrageously. Carte, iii. 714. All the council, except this minister, are said to have been favourable to peace. Id. 938.

[2] Winwood, vol. ii. 100. 152., &c. Birch's Negotiations of Edmondes. If we may believe sir Charles Cornwallis, our ambassador at Madrid, "England never lost such an opportunity of winning honour and wealth, as by relinquishing the war." The Spaniards were astonished how peace could have been obtained on such advantageous conditions. Winwood, p. 75.

from Spain, entering into such a detail of alleged cruelties as was likely to exasperate that assembly. Nothing, however, was done for a considerable time, when, after receiving the report of a committee on the subject, the house prayed a conference with the lords. They, who acted in this and the preceding session as the mere agents of government, intimated in their reply, that they thought it an unusual matter for the commons to enter upon, and took time to consider about a conference. After some delay this was granted, and sir Francis Bacon reported its result to the lower house. The earl of Salisbury managed the conference on the part of the lords. The tenor of his speech, as reported by Bacon, is very remarkable. After discussing the merits of the petition, and considerably extenuating the wrongs imputed to Spain, he adverted to the circumstance of its being presented to the commons. The crown of England was invested, he said, with an absolute power of peace and war; and inferred, from a series of precedents which he vouched, that petitions made in parliament, intermeddling with such matters, had gained little success; that great inconveniences must follow from the public debate of a king's designs, which, if they take wind, must be frustrated; and that if parliaments have ever been made acquainted with matter of peace or war in a general way, it was either when the king and council conceived that it was material to have some declaration of the zeal and affection of the people, or else when they needed money for the charge of a war, in which case they should be sure enough to hear of it; that the lords would make a good construction of the commons' desire, that it sprang from a forwardness to assist his majesty's future resolutions, rather than a determination to do that wrong to his supreme power which haply might appear to those who were prone to draw evil inferences from their proceedings. The earl of Northampton, who also bore a part in this conference, gave as one reason among others, why the lords could not concur in forwarding the petition to the crown, that the composition of the house of commons was in its first foundation intended merely to be of those that have their residence and vocation in the places for which they serve, and therefore to have a private and local wisdom according to that compass, and so not fit to examine or determine secrets of state, which depend upon such variety of circumstances; and although he acknowledged that there were divers gentlemen in the house of good capacity and insight into matters of state, yet that was the accident of the person, and not the intention of the place; and things were to be taken in the institution, and not in the practice. The commons seem to have acquiesced in this rather contemptuous treatment. Several precedents indeed might have been opposed to those of the earl of Salisbury, wherein the commons, especially under Richard II. and Henry VI., had assumed a right of advising on matters of peace and war. But the more recent usage of the constitution did not warrant such an interference. It was however rather a bold assertion, that they were not the proper channel through which public grievances, or those of so large a portion of the community as the merchants, ought to be represented to the throne.[1]

[1] Bacon, i. 663.; Journals, p. 341. Carte says, on the authority of the French ambassador's despatches, that the ministry secretly put forward this petition of the commons in order to

During the interval of two years and a half that elapsed before the commencement of the next season, a decision had occurred in the court of exchequer, which threatened the entire overthrow of our constitution. It had always been deemed the indispensable characteristic of a limited monarchy, however irregular and inconsistent might be the exercise of some prerogatives, that no money could be raised from the subject without the consent of the estates. This essential principle was settled in England, after much contention, by the statute entitled Confirmatio Chartarum, in the 25th year of Edward I. More comprehensive and specific in its expression than the Great Charter of John, it abolishes all "aids, tasks, and prises, unless by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed;" the king explicitly renouncing the custom he had lately set on wool. Thus the letter of the statute and the history of the times conspire to prove, that impositions on merchandise at the ports, to which alone the word prises was applicable, could no more be levied by the royal prerogative after its enactment, than internal taxes upon landed or moveable property, known in that age by the appellations of aids and tallages. But as the former could be assessed with great ease, and with no risk of immediate resistance, and especially as certain ancient customs were preserved by the statute,[1] so that a train of fiscal officers, and a scheme of regulations and restraints upon the export and import of goods became necessary, it was long before the sovereigns of this kingdom could be induced constantly to respect this part of the law. Hence several remonstrances from the commons under Edward III. against the maletolts or unjust exactions upon wool, by which, if they did not obtain more than a promise of effectual redress, they kept up their claim, and perpetuated the recognition of its justice, for the sake of posterity. They became powerful enough to enforce it under Richard II., in whose time there is little clear evidence of illegal impositions; and from the accession of the house of Lancaster, it is undeniable that they ceased altogether. The grant of tonnage and poundage for the king's life, which from the time of Henry V. was made in the first parliament of every reign, might perhaps be considered as a tacit compensation to the crown for its abandonment of these irregular extortions.

Henry VII., the most rapacious, and Henry VIII., the most despotic of English monarchs, did not presume to violate this acknowledged right. The first who had again recourse to this means of enhancing the revenue was Mary, who, in the year 1557, set a duty upon cloths exported beyond seas, and afterwards another on the importation of

frighten the Spanish court into making compensation to the merchants, wherein they succeeded. iii. 766. This is rendered very improbable by Salisbury's behaviour. It was Carte's mistake to rely too much on the despatches he was permitted to read in the Dépôt des Affaires Etrangères; as if an ambassador were not liable to be deceived by rumours in a country of which he has in general too little knowledge to correct them.

[1] There was a duty on wool, woolfells, and leather, called magna, or sometimes antiqua custuma, which is said in Dyer to have been by prescription, and by the barons in Bates's case to have been imposed by the king's prerogative. As this existed before the 25th Edward I., it is not very material whether it were so imposed, or granted by parliament. During the discussion, however, which took place in 1610, a record was discovered of 3 Edw. I. proving it to have been granted par tous les grauntz del realme, par la prière des comunes des marchants de tout Engleterre. Hale, 146. The prisage of wines, or duty of two tons from every vessel, is considerably more ancient; but how the crown came by this right does not appear.

French wines. The former of those was probably defended by arguing, that there was already a duty on wool; and if cloth, which was wool manufactured, could pass free, there would be a fraud on the revenue. The merchants, however, did not acquiesce in this arbitrary imposition, and as soon as Elizabeth's accession gave hopes of a restoration of English government, they petitioned to be released from this burthen. The question appears, by a memorandum in Dyer's Reports, to have been extra-judicially referred to the judges, unless it were rather as assistants to the privy council that their opinion was demanded. This entry concludes abruptly, without any determination of the judges.[1] But we may presume, that if any such had been given in favour of the crown, it would have been made public. And that the majority of the bench would not have favoured this claim of the crown, we may strongly presume from their doctrine in a case of the same description, wherein they held the assessment of treble custom on aliens for violation of letters patent to be absolutely against the law.[2] The administration however, would not release this duty, which continued to be paid under Elizabeth. She also imposed one upon sweet wines. We read of no complaint in parliament against this novel taxation; but it is alluded to by Bacon in one of his tracts during the queen's reign, as a grievance alleged by her enemies. He defends it, as laid only on a foreign merchandize, and a delicacy which might be forborne. (Bacon, i. 521.) But considering Elizabeth's unwillingness to require subsidies from the commons, and the rapid increase of foreign traffic during her reign, it might be asked why she did not extend these duties to other commodities, and secure to herself no trifling annual revenue. What answer can be given, except that, aware how little any unparliamentary levying of money could be supported by law or usage, her ministers shunned to excite attention to these innovations which wanted hitherto the stamp of time to give them prescriptive validity?[3]

James had imposed a duty of five shillings per hundredweight on currants, over and above that of two shillings and sixpence, which was granted by the statute of tonnage and poundage.[4] Bates, a Turkey

[1] Dyer, fol. 165. An argument of the great lawyer Plowden in this case of the queen's increasing the duty on cloths is in the British Museum, Hargrave MSS. 32., and seems, as far as the difficult handwriting permitted me to judge, adverse to the prerogative.

[2] This case I have had the good fortune to discover in one of Mr. Hargrave's MSS. in the Museum, No. 132. fol. 66. It is in the handwriting of chief-justice Hyde (temp. Car. 1.), who has written in the margin. "This is the report of a case in my lord Dyer's written original, but is not in the printed books." The reader will judge for himself why it was omitted, and why the entry of the former case breaks off so abruptly. "Philip and Mary granted to the town of Southampton that all malmsy wines should be landed at that port under penalty of paying treble custom. Some merchants of Venice having landed wines elsewhere, an information was brought against them in the exchequer, 1 Eliz., and argued several times in the presence of all the judges. Eight were of opinion against the letters patent, among whom Dyer and Catlin, chief-justices, as well for the principal matter of restraint in the landing of malmsies at the will and pleasure of the merchants, for that it was against the laws, statutes, and customs of the realm, Magna Charta, c. 30.; 9 E. 3.; 14 E. 3.; 25 E. 3. c. 2.; 27 E. 3.; 28 E. 3.; 2 R. 2. c. 1. and others, as also in the assessment of treble custom, *which is merely against the law;* also the prohibition above said was held to be private, and not public. But baron Lake e contra, and Browne J. censuit, deliberandum. And after, at an after meeting the same Easter term at Serjeants' Inn, it was resolved as above. And after by parliament, 5 Eliz. the patent was confirmed and affirmed against aliens."

[3] Hale's Treatise on the Customs, part 3.; in Hargrave's Collection of Law Tracts. See also the preface by Hargrave to Bates's case in the State Trials, where this most important question is learnedly argued.

[4] He had previously published letters patent, setting a duty of six shillings and eight-pence

merchant, having refused payment, an information was exhibited against him in the exchequer. Judgment was soon given for the crown. The courts of justice, it is hardly necessary to say, did not consist of men conscientiously impartial between the king and the subject; some corrupt with hope of promotion, many more fearful of removal, or awe-struck by the frowns of power. The speeches of chief baron Fleming, and of baron Clark, the only two that are preserved in Lane's Reports, contain propositions still worse than their decision, and wholly subversive of all liberty. "The king's power," it was said, "is double—ordinary and absolute; and these have several laws and ends. That of the ordinary is for the profit of particular subjects, exercised in ordinary courts, and called common law, which cannot be changed in substance without parliament. The king's absolute power is applied to no particular person's benefit, but to the general safety; and this is not directed by the rules of common law, but more properly termed policy and government, varying according to his wisdom for the common good; and all things done within those rules are lawful. The matter in question is matter of state, to be ruled according to policy by the king's extraordinary power. All customs (duties so called) are the effects of foreign commerce; but all affairs of commerce and all treaties with foreign nations belong to the king's absolute power; he therefore who has power over the cause, must have it also over the effect. The sea-ports are the king's gates, which he may open and shut to whom he pleases." The ancient customs on wine and wool are asserted to have originated in the king's absolute power, and not in a grant of parliament; a point, whether true or not, of no great importance, if it were acknowledged, that many statutes had subsequently controlled this prerogative. But these judges impugned the authority of statutes derogatory to their idol. That of 45 E. 3. c. 4., that no new imposition should be laid on wool or leather, one of them maintains, did not bind the king's successors; for the right to impose such duties was a principal part of the crown of England, which the king could not diminish. They extolled the king's grace in permitting the matter to be argued, commenting at the same time on the insolence shown in disputing so undeniable a claim. Nor could any judges be more peremptory in resisting an attempt to overthrow the most established precedents, than were these barons of king James's exchequer, in giving away those fundamental liberties in which every Englishman was inherited. (State Trials, ii. 371.)

The immediate consequence of this decision was a book of rates, published in July 1608, under the authority of the great seal, imposing heavy duties upon almost all merchandise.[1] But the judgment of the court of exchequer did not satisfy men jealous of the crown's encroachments. The imposition on currants had been already noticed as a grievance by the house of commons in 1606. But the king answered that the question was in a course for legal determination; and the commons themselves, which is worthy of remark, do not appear to have

a pound, in addition to two-pence already payable, on tobacco; intended no doubt to operate as a prohibition of a drug he so much hated. Rymer, xvi. 602.

[1] Hale's Treatise on the Customs. These were perpetual, "to be for ever hereafter paid to the king and his successors, on pain of his displeasure." State Trials, 481.

entertained any clear persuasion that the impost was contrary to law. (Journals, 295. 297.) In the session, however, which began in February 1610, they had acquired new light by sifting the legal authorities, and, instead of submitting their opinions to the courts of law, which were in truth little worthy of such deference, were the more provoked to remonstrate against the novel usurpation those servile men had endeavoured to prop up. Lawyers, as learned probably as most of the judges, were not wanting in their ranks. The illegality of impositions was shown in two elaborate speeches by Hakewill and Yelverton.[1] And the country gentlemen, who, though less deeply versed in precedents, had too good sense not to discern, that the next step would be to levy taxes on their lands, were delighted to find, that there had been an old English constitution not yet abrogated, which would bear them out in their opposition. When the king therefore had intimated by a message, and afterwards in a speech, his command not to enter on the subject, couched in that arrogant tone of despotism which this absurd prince affected,[2] they presented a strong remonstrance against this inhibition; claiming "as an ancient, general, and undoubted right of parliament to debate freely all matters which do properly concern the subject; which freedom of debate being once foreclosed, the essence of the liberty of parliament is withal dissolved. For the judgment given by the exchequer, they take not on them to review it, but desire to know the reasons whereon it was grounded; especially as it was generally apprehended that the reasons of that judgment extended much farther, even to the utter ruin of the ancient liberty of this kingdom, and of the subjects' right of property in their lands and goods." (Journals, 431.) "The policy and constitution of this your kingdom (they say) appropriates unto the kings of this realm, with the assent of the parliament, as well as the sovereign power of making laws, as that of taxing, or imposing upon the subjects' goods or merchandizes, as may not, without their consents, be altered or changed. This is the cause, that the people of this kingdom, as they ever showed themselves faithful and loving to their kings, and ready to aid them, in all their just occasions, with voluntary contributions; so have they been ever careful to preserve their own liberties and rights, when any thing hath been done to prejudice or impeach the same. And therefore when their princes, occasioned either by their wars, or their over-great bounty, or

[1] Mr. Hakewill's speech, though long, will repay the diligent reader's trouble, as being a very luminous and masterly statement of this great argument. State Trials, ii. 407. The extreme inferiority of Bacon, who sustained the cause of prerogative, must be apparent to every one. Id. 345. Sir John Davis makes somewhat a better defence; his argument is, that the king may lay an embargo on trade, so as to prevent it entirely, and consequently may annex conditions to it. Id. 399. But to this it was answered, that the king can only lay a temporary embargo, for the sake of some public good, not prohibit foreign trade altogether.

As to the king's prerogative of restraining foreign trade, see extracts from Hale's MS. Treatise de Jure Coronæ, in Hargrave's Preface to Collection of Law Tracts, p. xxx. &c. It seems to have been chiefly as to exportation of corn.

[2] Aikin's Memoirs of James I. i. 350. This speech justly gave offence. "The 21st of this present (May, 1610)," says a correspondent of Sir Ralph Winwood, "he made another speech to both the houses, but so little to their satisfaction that I hear it bred generally much discomfort to see our monarchial power and royal prerogative strained so high, and made so transcendent every way, that if the practice should follow the positions, we are not likely to leave to our successors that freedom we received from our forefathers; nor make account of any thing we have longer than they list that govern." Winwood, iii. 175. The traces of this discontent appear in short notes of the debates. Journals, p. 430.

by any other ministers, have without consent of parliament set impositions, either within the land, or upon commodities either exported or imported by the merchants, they have, in open parliament, complained of it, in that it was done without their consents: and thereupon never failed to obtain a speedy and full redress, without any claim made by the kings, of any power or prerogative in that point. And though the law of property be original, and carefully preserved by the common laws of this realm, which are as ancient as the kingdom itself; yet these famous kings, for the better contentment and assurance of their loving subjects, agreed, that this old fundamental right should be further declared and established by act of parliament. Wherein it is provided, that no such charges should ever be laid upon the people, without their common consent, as may appear by sundry records of former times. We, therefore, your majesty's most humble commons assembled in parliament, following the example of this worthy case of our ancestors, and out of a duty of those for whom we serve, finding, that your majesty, without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war, have, with all humility, presumed to present this most just and necessary petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away; and that your majesty, in imitation likewise of your noble progenitors, will be pleased, that a law be made during this session of parliament, to declare that all impositions set, or to be set upon your people, their goods or merchandizes, save only by common consent in parliament, are and shall be void."[1] They proceeded accordingly, after a pretty long time occupied in searching for precedents, to pass a bill taking away impositions; which, as might be anticipated, did not obtain the concurrence of the upper house.

The commons had reason for their apprehensions. This doctrine of the king's absolute power beyond the law had become current with all who sought his favour, and especially with the high church party. The convocation had in 1606 drawn up a set of canons, denouncing as erroneous a number of tenets hostile in their opinion to royal government. These canons, though never authentically published till a later age, could not have been secret. They consist of a series of propositions or paragraphs, to each of which an anathema of the opposite error is attached; deducing the origin of government from the patriarchal regimen of families, to the exclusion of any popular choice. In those golden days the functions both of king and priest were, as they term it, "the prerogatives of birthright;" till the wickedness of mankind brought in usurpation, and so confused the pure stream of the fountain with its muddy runnels, that we must now look to prescription for that right which we cannot assign to primogeniture. Passive obedience in all cases, without exception, to the established monarch is inculcated.[2]

[1] Somers' Tracts, vol. ii. 159.; in the Journals much shorter.

[2] These canons were published in 1690 from a copy belonging to bishop Overall, with Sancroft's imprimatur. The titlepage runs in an odd expression:—"Bishop Overall's Convocation-Bobk concerning the Government of God's Catholic Church and the Kingdoms of the

It is not impossible that a man might adopt this theory of the original of government, unsatisfactory as it must appear on reflection, without deeming it incompatible with our mixed and limited monarchy. But its tendency was evidently in a contrary direction. The king's power was of God, that of the parliament only of man, obtained perhaps by rebellion; but out of rebellion what right could spring? Or were it even by voluntary concession, could a king alienate a divine gift, and infringe the order of Providence? Could his grants, if not in themselves null, avail against posterity, heirs like himself under the great feoffment of creation? These consequences were at least plausible; and some would be found to draw them. And indeed if they were never explicitly laid down, the mere difference of respect with which mankind could not but contemplate a divine and human, a primitive or paramount, and a derivative authority, would operate as a prodigious advantage in favour of the crown.

The real aim of the clergy in thus enormously enhancing the pretensions of the crown was to gain its sanction and support for their own. Schemes of ecclesiastical jurisdiction, hardly less extensive than had warmed the imagination of Becket, now floated before the eyes of his successor Bancroft. He had fallen indeed upon evil days, and perfect independence of the temporal magistrate could no longer be attempted; but he acted upon the refined policy of making the royal supremacy over the church, which he was obliged to acknowledge, and professed to exaggerate, the very instrument of its independence upon the law. The favourite object of the bishops in this age was to render their ecclesiastical jurisdiction, no part of which had been curtailed in our hasty reformation, as unrestrained as possible by the courts of law. These had been wont, down from the reign of Henry II., to grant writs of prohibition, whenever the spiritual courts transgressed their proper limits; to the great benefit of the subject, who would otherwise have lost his birthright of the common law, and been exposed to the defective, not to say iniquitous and corrupt procedure of the ecclesiastical tribunals. But the civilians, supported by the prelates, loudly complained of these prohibitions, which seem to have been much more frequent in the latter years of Elizabeth and the reign of James, than in any other period. Bancroft accordingly presented to the star-chamber, in 1605, a series of petitions in the name of the clergy, which lord Coke has denominated Articuli Cleri, by analogy to some similar representations of that order under Edward II.[1] In these it was complained, that the courts of law interfered by continual prohibitions with a jurisdiction as established and as much derived from the king as their own, either in cases which were clearly within that jurisdiction's

whole World." The second canon is as follows:—"If any man shall affirm that men at the first ran up and down in woods and fields, &c., until they were taught by experience the necessity of government; and that therefore they chose some among themselves to order and rule the rest, giving them power and authority so to do; and that consequently all civil power jurisdiction, and authority, was first derived from the people and disordered multitude, or either is originally still in them, or else is deduced by their consent naturally from them, and is not God's ordinance, originally descending from him and depending upon him, he doth greatly err." P. 3.

[1] Coke's 2nd Institute, 601. Collier, 688. State Trials, ii. 131. See too an angry letter of Bancroft, written about 1611, (Strype's Life of Whitgift, Append. 227.), wherein he inveighs against the common lawyers and the parliament.

limits, or on the slightest suggestion of some matter belonging to the temporal court. It was hinted, that the whole course of granting prohibitions was an encroachment of the king's bench and common pleas, and that they could regularly issue only out of chancery. To each of these articles of complaint, extending to twenty-five, the judges made separate answers in a rough, and, some might say, a rude style, but pointed and much to the purpose; vindicating in every instance their right to take cognisance of every collateral matter springing out of an ecclesiastical suit, and repelling the attack upon their power to issue prohibitions, as a strange presumption. Nothing was done, nor, thanks to the firmness of the judges, could be done, by the council in this respect. For the clergy had begun by advancing that the king's authority was sufficient to reform what was amiss in any of his own courts, all jurisdiction spiritual and temporal being annexed to his crown. But it was positively and repeatedly denied in reply, that any thing less than an act of parliament could alter the course of justice established by law. This effectually silenced the archbishop, who knew how little he had to hope from the commons. By the pretensions made for the church in this affair, he exasperated the judges, who had been quite sufficiently disposed to second all rigorous measures against the puritan ministers, and aggravated that jealousy of the ecclesiastical courts, which the common lawyers had long entertained.

An opportunity was soon given to those who disliked the civilians, that is, not only to the common lawyers, but to all the patriots and puritans in England, by an imprudent publication of a doctor Cowell. This man, in a law dictionary dedicated to Bancroft, had thought fit to insert passages of a tenor conformable to the new creed of the king's absolute or arbitrary power. Under the title King, it is said:—"He is above the law by his absolute power; and though for the better and equal course in making laws he do admit the three estates unto council, yet this in divers learned men's opinion is not of constraint but of his own benignity, or by reason of the promise made upon oath at the time of his coronation. And though at his coronation he take an oath not to alter the laws of the land, yet this oath notwithstanding, he may alter or suspend any particular law that seemeth hurtful to the public estate. Thus much in short, because I have heard some to be of opinion that the laws are above the king." And in treating of the Parliament Cowell observes: "Of these two one must be true, either that the king is above the parliament, that is, the positive laws of his kingdom, or else that he is not an absolute king. And therefore though it be a merciful policy and also a politic mercy, not alterable without great peril, to make laws by the consent of the whole realm, because so no part shall have cause to complain of a partiality, yet simply to bind the prince to or by these laws were repugnant to the nature and constitution of an absolute monarchy." It is said again, under the title Prerogative, that "the king, by the custom of this kingdom, maketh no laws without the consent of the three estates, though he may quash any law concluded of by them;" and that he "holds it incontrollable, that the king of England is an absolute king."[1]

[1] Cowell's Interpreter, or Law Dictionary; edit. 1607. These passages are expunged in the

Such monstrous positions from the mouth of a man of learning and conspicuous in his profession, who was surmised to have been instigated as well as patronised by the archbishop, and of whose book the king was reported to have spoken in terms of eulogy, gave very just scandal to the house of commons. They solicited and obtained a conference with the lords, which the attorney-general, sir Francis Bacon, managed on the part of the lower house; a remarkable proof of his adroitness and pliancy. James now discovered that it was necessary to sacrifice this too unguarded advocate of prerogative: Cowell's book was suppressed by proclamation, for which the commons returned thanks, with great joy at their victory.[1]

It is the evident policy of every administration in dealing with the house of commons, to humour them in every thing that touches their pride and tenaciousness of privilege, never attempting to protect any one who incurs their displeasure by want of respect. This seems to have been understood by the earl of Salisbury, the first English minister who, having long sat in the lower house, and become skilful in those arts of management which his successors have always reckoned so essential a part of their mystery. He wanted a considerable sum of money to defray the king's debts, which, on his coming into the office of lord treasurer after lord Buckhurst's death he found to amount to 1,300,000*l.*, about one third of which was still undischarged. The ordinary expense also surpassed the revenue by 81,000*l.* It was impossible that this could continue, without involving the crown in such embarrassments as would leave it wholly at the mercy of parliament. Cecil therefore devised the scheme of obtaining a perpetual yearly revenue of 200,000*l.*, to be granted once for all by parliament; and the better to incline the house to this high and extraordinary demand, he promised in the king's name to give all the redress and satisfaction in his power for any grievances that they might bring forward. (Winwood, iii. 123.)

This offer on the part of government seemed to make an opening for a prosperous adjustment of the differences which had subsisted ever since the king's accession. The commons accordingly, postponing the business of a subsidy, to which the courtiers wished to give priority, brought forward a host of their accustomed grievances in ecclesiastical and temporal concerns. The most essential was undoubtedly that of impositions, which they sent up a bill to the lords, as above mentioned, to take away. They next complained of the ecclesiastical high commission court, which took upon itself to fine and imprison, powers not belonging to their jurisdiction, and passed sentence without appeal, interfering frequently with civil rights, and in all its procedure neglecting the rules and precautions of the common law. They dwelt on the

later editions of this useful book. What the author says of the writ of prohibition, and the statutes of præmunire, under these words, was very invidious towards the common lawyers, treating such restraints upon the ecclesiastical jurisdiction as necessary in former ages, but now become useless since the annexation of the supremacy to the crown.

[1] Commons' Journals, 339., and afterwards to 415. The authors of a parliamentary history say there is no further mention of the business after the conference, overlooking the most important circumstance, the king's proclamation suppressing the book, which yet is mentioned by Rapin and Carte, though the latter makes a false and disingenuous excuse for Cowell. Vol. iii. p. 798. Several passages concerning this affair occur in Winwood's Memorials, to which I refer the curious reader. Vol. iii. pp. 125. 129. 131. 136. 137. 145.

late abuse of proclamations assuming the character of laws. "Amongst many other points of happiness and freedom," it is said, "which your majesty's subjects of this kingdom have enjoyed under your royal progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of the law which giveth both to the head and members that which of right belongeth to them, and not by any uncertain or arbitrary form of government, which, as it hath proceeded from the original good constitution and temperature of this estate, so hath it been the principal means of upholding the same, in such sort as that their kings have been just, beloved, happy, and glorious, and the kingdom itself peaceable, flourishing, and durable so many ages. And the effect, as well of the contentment that the subjects of this kingdom have taken in this form of government, as also of the love, respect, and duty, which they have by reason of the same, rendered unto their princes, may appear in this, that they have, as occasion hath required, yielded more extraordinary and voluntary contribution to assist their kings, than the subjects of any other known kingdom whatsoever. Out of this root hath grown the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods, other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament. Nevertheless, it is apparent, both that proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and make a new; other some made, shortly after a session of parliament, for matter directly rejected in the same session; other appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents; some, as the proclamation of starch, accompanied with letters commanding inquiry to be made against the transgressors at the quarter-sessions; and some vouching former proclamations to countenance and warrant the latter, as by a catalogue here underwritten more particularly appeareth. By reason whereof there is a general fear conceived and spread amongst your majesty's people, that proclamations will, by degrees, grow up, and increase to the strength and nature of laws; whereby not only that ancient happiness, freedom, will be much blemished (if not taken away) which their ancestors have so long enjoyed; but the same may also (in process of time) bring a new form of arbitrary government upon the realm: and this their fear is the more increased by occasion of certain books lately published, which ascribe a greater power to proclamations than heretofore had been conceived to belong unto them; as also of the care taken to reduce all the proclamations made since your majesty's reign into one volume, and to print them in such form as acts of parliament formerly have been, and still are used to be, which seemeth to imply a purpose to give them more reputation and more establishment than heretofore they have had." (Somers' Tracts, ii. 162. State Trials, ii. 519.)

They proceed, after a list of these illegal proclamations, to enumerate other grievances, such as the delay of courts of law in granting writs of prohibition and habeas corpus, the jurisdiction of the council of Wales over the four bordering shires of Gloucester, Worcester, Hereford, and Salop,[1] some patents of monopolies, and a tax under the name of a licence recently set upon victuallers. The king answered these remonstrances with civility, making, as usual, no concession with respect to the ecclesiastical commission, and evading some of their other requests; but promising that his proclamations should go no further than was warranted by law, and that the royal licences to victuallers should be revoked.

It appears that the commons, deeming these enumerated abuses contrary to law, were unwilling to chaffer with the crown for the restitution of their actual rights. There were, however, parts of the prerogative which they could not dispute, though galled by the burthen: the incidents of feudal tenure and purveyance. A negotiation was accordingly commenced and carried on for some time with the court, for abolishing both these, or at least the former. The king, though he refused to part with tenure by knight's service, which he thought connected with the honour of the monarchy, was induced, with some real or pretended reluctance, to give up its lucrative incidents, relief, primer seisin, and wardship, as well as the right of purveyance. But material difficulties recurred in the prosecution of this treaty. Some were apprehensive, that the validity of a statute cutting off such ancient branches of prerogative might hereafter be called in question; especially if the root from which they sprung, tenure in capite, should still remain. The king's demands too seemed exorbitant. He asked 200,000*l.* as a yearly revenue over and above 100,000*l.*, at which his wardships were valued, and which the commons were content to give. After some days' pause upon this proposition, they represented to the lords, with whom, through committees of conference, the whole matter had been discussed, that if such a sum were to be levied on those only who had lands subject to wardship, it would be a burthen they could not endure; and that if it were imposed equally on the kingdom, it would cause more offence and commotion in the people than they could risk. After a good deal of haggling, Salisbury delivered the king's final determination to accept 200,000*l.* per annum, which the commons voted to grant as a full composition for abolishing the right

[1] The court of the council of Wales was erected by statute 44 H. 8. c. 26. for that principality and its marches, with authority to determine such causes and matters as should be assigned to them by the king, "as heretofore hath been accustomed and used;" which implies a previous existence of some such jurisdiction. It was pretended that the four counties of Hereford, Worcester, Gloucester, and Salop were included within their authority, as marches of Wales. This was controverted in the reign of James by the inhabitants of these counties, and on reference to the twelve judges, according to lord Coke, it was resolved that they were ancient English shires, and not within the jurisdiction of the council of Wales; "and yet," he subjoins, "the commission was not after reformed in all points as it ought to have been." Fourth Inst. 242. An elaborate argument in defence of the jurisdiction may be found in Bacon, ii. 122. And there are many papers on this subject in Cotton MSS. Vitellius, c. i. The complaints of this enactment had begun in the time of Elizabeth. It was alleged that the four counties had been reduced from a very disorderly state to tranquillity by means of the council's jurisdiction. But, if this were true, it did not furnish a reason for continuing to exclude them from the general privileges of the common law, after the necessity had ceased. The king, however, was determined not to concede this point. Carte, iii. 794.

of wardship, and dissolving the court that managed it, and for taking away all purveyance; with some further concessions, and particularly, that the king's claim to lands should be bound by sixty years' prescription. Two points yet remained, of no small moment; namely, by what assurance they could secure themselves against the king's prerogative, so often held up by court lawyers as something uncontrollable by statute, and by what means so great an imposition should be levied; but the consideration of these was reserved for the ensuing session, which was to take place in October.[1] They were prorogued in July till that month, having previously granted a subsidy for the king's immediate exigencies. On their meeting again, the lords began the business by requesting a conference with the other house about the proposed contract. But it appeared that the commons had lost their disposition to comply. Time had been given them to calculate the disproportion of the terms, and the perpetual burthen that lands held by knight's service must endure. They had reflected too on the king's prodigal humour, the rapacity of the Scots in his service, and the probability that this additional revenue would be wasted without sustaining the national honour, or preventing future applications for money. They saw that after all the specious promises by which they had been led on, no redress was to be expected as to those grievances they had most at heart; that the ecclesiastical courts would not be suffered to lose a jot of their jurisdiction, that illegal customs were still to be levied at the out-ports, that proclamations were still to be enforced like acts of parliament. Great coldness accordingly was displayed in their proceedings; and in a short time, this distinguished parliament, after sitting nearly seven years, was dissolved by proclamation.[2]

It was now perhaps too late for the king, by any reform or concession, to regain that public esteem which he had forfeited. Deceived by an overweening opinion of his own learning, which was not inconsiderable, of his general abilities, which were far from contemptible, and of his capacity for government, which was very small, and confirmed in this delusion by the disgraceful flattery of his courtiers and bishops, he had wholly overlooked the real difficulties of his position; as a foreigner, rather distantly connected with the royal stock, and as a native of a hostile and hateful kingdom, come to succeed the most renowned of sovereigns, and to grasp a sceptre which deep policy and long experience had taught her admirably to wield.[3] The people were proud of martial glory, he spoke only of the blessing of the peace-makers; they

[1] Commons' Journals for 1610, passim. Lords' Journals, 7th May, et post. Parl. Hist. 1124. et post. Bacon, i. 676. Winwood, iii. 119. et post.

[2] It appears by a letter of the king in Murden's State Papers, p. 813., that some indecent allusions to himself in the house of commons had irritated him. "Wherein we have misbehaved ourselves, we know not, nor we can never yet learn; but sure we are, we may say with Bellarmin in his book, that in all the lower houses these seven years past, especially these two last sessions, Ego pungor, ego carpor. Our fame and actions have been tossed like tennis-balls among them, and all that spite and malice durst do to disgrace and inflame us hath been used. To be short, this lower house by their behaviour have perilled and annoyed our health, wounded our reputation, emboldened all ill-natured people, encroached upon many of our privileges, and plagued our people with their delays. It only resteth now, that you labour all you can to do that you think best to the repairing of our estate."

[3] "Your queen," says lord Thomas Howard, in a letter, "did talk of her subjects' love and affection, and in good truth she aimed well; our king talketh of his subjects' fear and subjection, and herein I think he doth well too, as long as it holdeth good." Nugæ Antiquæ, i. 395.

abhorred the court of Spain, he sought its friendship; they asked for indulgence for scrupulous consciences, he would bear no deviation from conformity; they writhed under the yoke of the bishops, whose power he thought necessary to his own; they were animated by a persecuting temper towards the catholics, he was averse to extreme rigour; they had been used to the utmost frugality in dispensing the public treasures, he squandered it on unworthy favourites; they had seen at least exterior decency of morals prevail in the queen's court, they now heard only of its dissoluteness and extravagance;[1] they had imbibed an exclusive fondness for the common law as the source of their liberties and privilege; his churchmen and courtiers, but none more than himself, talked of absolute power and the imprescriptible rights of monarchy.[2]

James lost in 1611 his son prince Henry, and in 1612 the lord treasurer Salisbury. He showed little regret for the former, whose high spirit and great popularity afforded a mortifying contrast; especially as the young prince had not taken sufficient pains to disguise his contempt for his father.[3] Salisbury was a very able man, to whom perhaps his contemporaries did some injustice. The ministers of weak and wilful monarchs are made answerable for the mischiefs they are compelled to suffer, and gain no credit for those they prevent. Cecil had made personal enemies of those who had loved Essex or admired Raleigh, as well as those who looked invidiously on his elevation. It was believed that the desire shown by the house of commons to abolish the feudal wardships, proceeded in a great measure from the circumstance that this obnoxious minister was master of the court of wards; an office both lucrative and productive of much influence. But he came into the scheme of abolishing it with a readiness that did him credit. His chief praise, however, was his management of continental relations. The only minister of James's cabinet who had been trained in the councils of Elizabeth, he retained some of her jealousy of Spain, and of her regard for the protestant interests. The court of Madrid, aware both of the king's pusillanimity, and of his favourable dispositions, affected a tone in the conferences held in 1604 about a treaty of peace, which Elizabeth would have resented in a very different manner.[4] On this occasion, he had not only deserted

[1] The court of James I. was incomparably the most disgraceful scene of profligacy which this country has ever witnessed; equal to that of Charles II. in the laxity of female virtue, and without any sort of parallel in some other respects. Gross drunkenness is imputed even to some of the ladies who acted in the court pageants, Nugæ Antiquæ, i. 348., which Mr. Gifford, who seems absolutely enraptured with this age and its manners, might as well have remembered. Life of Ben Jonson, p. 231., &c. The king's profligacy is notorious.

[2] "It is atheism and blasphemy," he says, in a speech made in the star-chamber, 1616, "to dispute what God can do; good Christians content themselves with his will revealed in his word; so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that." King James's Works, p. 557.

It is probable that his familiar conversation was full of this rodomontade, disgusting and contemptible from so wretched a pedant, as well as offensive to the indignant ears of those who knew and valued their liberties. The story of bishops Neile and Andrews is far too trite for repetition.

[3] Carte, iii. 747. Birch's Life of P. Henry, 405. Rochester, three days after, directed sir Thomas Edmondes at Paris to commence a negotiation for a marriage between prince Charles and the second daughter of the late king of France. But the ambassador had more sense of decency, and declined to enter on such an affair at that moment.

[4] Winwood, vol. ii. Carte. iii. 749. Watson's Hist. of Philip III., App. In some passages of this negotiation, Cecil may appear not wholly to have deserved the character I have given

the United Provinces, but gave hopes to Spain that he might, if they persevered in their obstinacy, take part against them. Nor have I any doubt that his blind attachment to that power would have precipitated him into a ruinous connexion, if Cecil's wisdom had not influenced his councils. During this minister's life, our foreign politics seem to have been conducted with as much firmness and prudence as his master's temper would allow; the mediation of England was of considerable service in bringing about the great truce of twelve years between Spain and Holland in 1609; and in the dispute which sprung up soon afterwards concerning the succession to the duchies of Cleves and Juliers, a dispute which threatened to mingle in arms the catholic and protestant parties throughout Europe,[1] our councils were full of a vigour and promptitude unusual in this reign; nor did any thing but the assassination of Henry IV prevent the appearance of an English army in the Netherlands. It must at least be confessed that the king's affairs, both at home and abroad, were far worse conducted after the death of the earl of Salisbury than before.[2]

The administration found an important disadvantage, about this time, in a sort of defection of sir Edward Coke (more usually called lord Coke), chief-justice of the king's bench, from the side of prerogative. He was a man of strong, though narrow, intellect; confessedly the greatest master of English law that had ever appeared; but proud and overbearing, a flatterer and tool of the court till he had obtained his ends, and odious to the nation for the brutal manner in which, as attorney-general, he had behaved towards sir Walter Ralcigh on his trial. In raising him to the post of chief-justice, the council had of course relied on finding his unfathomable stores of precedent subservi-

him for adhering to Elizabeth's principles of policy. But he was placed in a difficult position, not feeling himself secure of the king's favour, which, notwithstanding his great previous services, that capricious prince, for the first year after his accession, rather sparingly afforded; as appears from the Memoirs of Sully, i. 14., and Nugæ Antiquæ, i. 345. It may be said that Cecil was as little Spanish, just as Walpole was as little Hanoverian, as the partialities of their respective sovereigns would permit, though too much so in appearance for their own reputation. It is hardly necessary to observe that James and the kingdom were chiefly indebted to Cecil for the tranquillity that attended the accession of the former to the throne. I will take this opportunity of noticing that the learned and worthy compiler of the catalogue of the Lansdowne manuscripts in the Museum has thought fit not only to charge sir Michael Hicks with venality, but to add: "It is certain that articles among these papers contribute to justify very strong suspicions, that neither of the secretary's masters [lord Burleigh and lord Salisbury] was altogether innocent on the score of corruption." Lansd. Cat. vol. xci. p. 45. This is much too strong an accusation to be brought forward without more proof than appears. It is absurd to mention presents of fat bucks to men in power, as bribes; and rather more so to charge a man with being corrupted because an attempt is made to corrupt him, as the catalogue-maker has done in this place. I would not offend this respectable gentleman; but by referring to many of the Lansdowne manuscripts I am enabled to say that he has travelled frequently out of his province, and substituted his conjectures for an analysis or abstract of the document before him.

[1] A great part of Winwood's third volume relates to this business, which, as is well known, attracted a prodigious degree of attention throughout Europe. The question, as Winwood wrote to Salisbury, was "not of the succession of Cleves and Juliers, but whether the house of Austria and the church of Rome, both now on the wane, shall recover their lustre and greatness in these parts of Europe." P. 378. James wished to have the right referred to his arbitration, and would have decided in favour of the elector of Brandenburg, the chief protestant competitor.

[2] Winwood, vols. ii. and iii. passim. Birch, that accurate master of this part of English history, has done justice to Salisbury's character. Negotiations of Edmondes, p. 347. Miss Aikin, looking to his want of constitutional principle, is more unfavourable, and perhaps on the whole, justly; but what statesman of that age was ready to admit the new creed of parliamentary control over the executive government? Memoirs of James, i. 395.

ent to their purposes. But soon after his promotion, Coke, from various causes, began to steer a more independent course. He was little formed to endure a competitor in his profession, and lived on ill terms both with the lord chancellor Egerton, and with the attorney-general sir Francis Bacon. The latter had long been his rival and enemy. Discountenanced by Elizabeth, who, against the importunity of Essex, had raised Coke over his head, that great and aspiring genius was now high in the king's favour. The chief justice affected to look down on him as one as inferior to him in knowledge of our municipal law, as he was superior in all other learning, and in all the philosophy of jurisprudence. And the mutual enmity of these illustrious men never ceased till each in his turn satiated his revenge by the others fall. Coke was also much offended by the attempts of the bishops to emancipate their ecclesiastical courts from the civil jurisdiction. I have already mentioned the peremptory tone in which he repelled Bancroft's Articuli Cleri. But as the king and some of the council rather favoured these episcopal pretensions, they were troubled by what they deemed his obstinacy, and discovered more and more that they had to deal with a most impracticable spirit.

It would be invidious to exclude from the motives that altered lord Coke's behaviour in matters of prerogative his real affection for the laws of the land, which novel systems, broached by the churchmen and civilians, threatened to subvert.[1] In Bates's case, which seems to have come in some shape extra-judicially before him, he had delivered an opinion in favour of the king's right to impose at the out-ports; but so cautiously guarded, and bottomed on such different grounds from those taken by the barons of exchequer, that it could not be cited in favour of any fresh encroachments.[2] He now performed a great service to his country. The practice of issuing proclamations, by way of temporary regulation indeed, but interfering with the subject's liberty, in cases unprovided for by the parliament, had grown still more usual than under Elizabeth. Coke was sent for to attend some of the council, who might perhaps have reason to conjecture his sentiments; and it was demanded whether the king, by his proclamation, might prohibit new buildings about London, and whether he might prohibit the making of starch from wheat. This was during the session of parliament in 1610,

[1] "On Sunday, before the king's going to Newmarket, (which was Sunday last was a se'nnight), my lord Coke and all the judges of the common law were before his majesty to answer some complaints made by the civil lawyers for the general granting of prohibitions. I heard that the lord Coke, amongst other offensive speech, should say to his majesty that his highness was defended by his laws. At which saying, with other speech then used by the lord Coke, his majesty was very much offended, and told him he spoke foolishly, and said that he was not defended by his laws, but by God: and so gave the lord Coke, in some words, a very sharp reprehension, both for that and other things; and withal told him that sir Thomas Crompton [judge of the admiralty] was as good a man as Coke; my lord Coke having then, by way of exception, used some speech against sir Thomas Crompton. Had not my lord treasurer, most humbly on his knee, used many good words to pacify his majesty, and to excuse that which had been spoken, it was thought his highness would have been much more offended. In the conclusion, his majesty, by means of my lord treasurer, was well pacified, and gave a gracious countenance to all the other judges, and said he would maintain the common law." Lodge, iii. 364. This letter is dated 25th Nov. 1608, which showed how early Coke had begun to give offence by his zeal for the law.

[2] 12 Reports. In his second Institute, p. 57., written a good deal later, he speaks in a very different manner of Bates's case, and declares the judgment of the court of exchequer to be contrary to law.

and with a view to what answer the king should make to the commons' remonstrance against these proclamations. Coke replied, that it was a matter of great importance, on which he would confer with his brethren.

"The chancellor said, that every precedent had first a commencement, and he would advise the judges to maintain the power and prerogative of the king; and in cases wherein there is no authority and precedent, to leave it to the king to order in it according to his wisdom and for the good of his subjects, or otherwise the king would be no more than the duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken. And the lord privy-seal (Northampton) said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease; and all concluded that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement. To which I answered, that true it is that every precedent ought to have a commencement; but when authority and precedent is wanting, there is need of great consideration before that any thing of novelty shall be established, and to provide that this be not against the law of the land; for I said that the king cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without parliament. But at this time I only desired to have a time of consultation and conference with my brothers." This was agreed to by the council, and three judges, besides Coke, appointed to consider it. They resolved that the king, by his proclamation, cannot create any offence which was not one before; for then he might alter the law of the land in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. It was also resolved that the king hath no prerogative but what the law of the land allows him. But the king, for the prevention of offences, may by proclamation admonish all his subjects that they keep the laws and do not offend them, upon punishment to be inflicted by the law; and the neglect of such proclamation Coke says, aggravates the offence. Lastly, they resolved that if an offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it so. After this resolution, the report goes on to remark, no proclamation imposing fine and imprisonment was made.[1]

12 Reports. There were, however, several proclamations afterwards to forbid building within two miles of London, except on old foundations, and in that case only with brick or stone, under penalty of being proceeded against by the attorney-general in the star-chamber. Rymer, xvii. 107. (1618). 144. (1619), 607. (1624). London nevertheless increased rapidly, which was by means of licences to build; the prohibition being in this, as in many other cases, enacted chiefly for the sake of the dispensations.

James made use of proclamations to infringe personal liberty in another respect. He disliked to see any country-gentlemen come up to London, where, it must be confessed, if we trust to what those proclamations assert, and the memoirs of the age confirm, neither their own behaviour nor that of their wives and daughters, who took the worst means of repairing the ruin their extravagance had caused, redounded to their honour. The king's comparison of them to ships in a river and in the sea is well known. Still, in a constitutional point of view, we may be startled at proclamations commanding them to return to their country-houses and maintain hospitality, on pain of condign punishment. Rymer, xvi. 517. (1604); xvii. 417, 1622). 632. (1624).

I neglected, in the first chapter, the reference I had made to an important dictum of the

By the abrupt dissolution of parliament, James was left nearly in the same necessity as before; their subsidy being by no means sufficient to defray his expenses, far less to discharge his debts. He had frequently betaken himself to the usual resource of applying to private subjects, especially to rich merchants, for loans of money. These loans, which bore no interest, and for the repayment of which there was no security, disturbed the prudent citizens; especially as the council used to solicit them with a degree of importunity at least bordering on compulsion. The house of commons had in the last session requested that no one should be bound to lend money to the king against his will. The king had answered that he allowed not of any precedents from the time of usurping or decaying princes, or people too bold and wanton; that he desired not to govern in that commonwealth where the people should be assured of every thing and hope for nothing, nor would he leave to posterity such a mark of weakness on his reign; yet, in the matter of loans, he would refuse no reasonable excuse. (Winwood iii. 193.) Forced loans or benevolences were directly prohibited by an act of Richard III., whose laws, however the court might sometimes throw a slur upon his usurpation, had always been in the statute-book. After the dissolution of 1610, James attempted as usual to obtain loans; but the merchants, grown bolder with the spirit of the times, refused him the accommodation. (Carte, iii. 805.) He had recourse to another method of raising money, unprecedented, I believe, before his reign, though long practised in France, the sale of honours. He sold several peerages for considerable sums, and created a new order of hereditary knights, called baronets, who paid 1000*l.* each, for their patents.[1]

Such resources, however, being evidently insufficient and temporary, it was almost indispensable to try once more the temper of a parliament. This was strongly urged by Bacon, whose fertility of invention rendered him constitutionally sanguine of success. He reported to the king that there were expedients for more judiciously managing a house of commons than Cecil, upon whom he was too willing to throw blame, had done with the last; that some of those who had been most forward in opposing were now won over, such as Neville, Yelverton, Hyde, Crew, Dudley Digges; that such might be done by forethought towards filling the house with well-affected persons, winning or blinding the lawyers, whom he calls "the literæ vocales of the house," and drawing the chief constituent bodies of the assembly, the country gentlemen, the merchants, the courtiers, to act for the king's advantage; that it would be expedient to tender voluntarily certain graces and modifications of the king's prerogative, such as might with smallest injury be

judges in the reign of Mary, which is decisive as to the legal character of proclamations even in the midst of the Tudor period. "The king, it is said, may make a proclamation quoad terrorem populi, to put them in fear of his displeasure, but not to impose any fine, forfeiture, or imprisonment; for no proclamation can make a new law, but only confirm and ratify an ancient one." Dalison's Reports, 20.

[1] The number of these was intended to be two hundred, but only ninety-three patents were sold in the first six years. Lingard, ix. 203,, from Somers' Tracts. In the first part of his reign he had availed himself of an old feudal resource, calling on all who held 40*l.* a year in chivalry (whether of the crown or not, as it seems) to receive knighthood, or to pay a composition. Rymer, xvi. 530. The object of this was of course to raise money from those who thought the honour troublesome and expensive, but such as chose to appear could not be refused: and this accounts for his having made many hundred knights in the first year of his reign. Harris's Life of James, 69.

conceded, lest they should be first demanded, and in order to save more important points. (MS. penes autorem.) This advice was seconded by sir Henry Neville, an ambitious man, who had narrowly escaped in the queen's time for having tampered in Essex's conspiracy, and had much promoted the opposition in the late parliament, but was now seeking the post of secretary of state. He advised the king, in a very sensible memorial, to consider what had been demanded and what had been promised in the last session, granting the more reasonable of the commons' requests, and performing all his own promises; to avoid any speech likely to excite irritation; and to seem confident of the parliament's good affections, not waiting to be pressed for what he meant to do. (Carte, iv. 17.) Neville and others, who, like him, professed to understand the temper of the commons, and facilitate the king's dealings with them, were called *undertakers*. (Wilson in Kennet, ii. 696.) The circumstance, like several others in the present reign, is curious, as it shows the rise of a systematic parliamentary influence, which was one day to become the mainspring of government.

Neville, however, and his associates had deceived the courtiers with promises they could not realise. It was resolved to announce certain intended graces in the speech from the throne; that is, to declare the king's readiness to pass bills that might remedy some grievances, and retrench a part of his prerogative. These proffered amendments of the law, though eleven in number, failed altogether of giving the content that had been fully expected. Except the repeal of a strange act of Henry VIII., allowing the king to make such laws as he should think fit for the principality of Wales, without consent of parliament,[1] none of them could perhaps be reckoned of any constitutional importance. In all dominal and fiscal causes, and wherever the private interests of the crown stood in competition with those of a subject, the former enjoyed enormous and superior advantages, whereof what is strictly called its prerogative was principally composed. The terms of prescription that bound other men's right, the rules of pleading and procedure established for the sake of truth and justice, did not, in general, oblige the king. It was not by doing away a very few of these invidious and oppressive distinctions, that the crown could be allowed to keep on foot still more momentous abuses. The commons of 1614 accordingly went at once to the characteristic grievance of his reign, the customs at the outports. They had grown so confident in their cause by ransacking ancient records, that an unanimous vote passed against the king's right of imposition; not that there were no courtiers in the house, but the cry was too obstreperous to be withstood.[2] They demanded a conference on the subject with the lords, who preserved a kind of mediating neutrality throughout this reign.[3] In the course of their

[1] This act (34 H. 8. c. 26.) was repealed a few years afterwards. 21 J. 1. c. 10.

[2] Commons' Journals, 466. 472. 481. 486. Sir Henry Wotton at length muttered something in favour of the prerogative of laying impositions, as belonging to hereditary though not to elective princes. Id. 493. This silly argument is only worth notice, as a proof what erroneous notions of government were sometimes imbibed from an intercourse with foreign nations. Dudley Digges and Sandys answered him very properly.

[3] The judges having been called upon by the house of lords to deliver their opinions on the subject of impositions, previous to the intended conference, requested, by the mouth of chief justice Coke, to be excused. This was probably a disappointment to lord chancellor Egerton, who had moved to consult them, and proceeded from Coke's dislike to him and to the court. It induced the house to decline the conference. Lords' Journals, 23d May.

debate, Neyle, bishop of Lichfield, threw out some aspersions on the commons. They were immediately in a flame, and demanded reparation. This Neyle was a man of indifferent character, and very unpopular from the share he had taken in the earl of Essex's divorce, and from his severity towards the puritans; nor did the house fail to comment upon all his faults in their debate. He had, however, the prudence to excuse himself, ("with many tears," as the Lords' Journals inform us), denying the most offensive words imputed to him; and the affair went no farther.[1] This ill-humour of the commons disconcerted those who had relied on the undertakers. But as the secret of these men had not been kept, their project considerably aggravated the prevailing discontent.[2] The king had positively denied in his first speech that there were any such undertakers; and Bacon, then attorney-general, laughed at the chimerical notion, that private men should undertake for all the commons of England.[3] That some persons, however, had obtained that name at court, and held out such promises, is at present out of doubt; and indeed the king, forgetful of his former denial, expressly confessed it on opening the session of 1621.

Amidst these heats, little progress was made; and no one took up the essential business of supply. The king at length sent a message, requesting that a supply might be granted, with a threat of dissolving parliament unless it were done. But the days of intimidation were gone by. The house voted that they would first proceed with the business of impositions, and postpone supply till their grievances should be redressed.[4] Aware of the impossibility of conquering their resolution, the king carried his measure into effect by a dissolution.[5] They had sat about two months, and, what is perhaps unprecedented in our history, had not passed a single bill. James followed up this strong step by one still more vigorous. Several members who had distinguished themselves by warm language against the government, were arrested after the dissolution, and kept for a short time in custody; a manifest violation of that freedom of speech, without which no assembly can be independent, and which is the stipulated privilege of the house of commons.[6]

It was now evident that James could never expect to be on terms of harmony with a parliament, unless by surrendering pretensions, which not only were in his eyes indispensable to the lustre of his monarchy, but from which he derived an income that he had no means of replacing. He went on accordingly for six years, supplying his exigencies by such precarious resources as circumstances might furnish. He restored the towns mortgaged by the Dutch to Elizabeth on payment of 2,700,000 florins, about one third of the original debt. The enormous fines imposed by the star-chamber, though seldom, I believe, enforced to

[1] Lords' Journals. May 31. Commons' Journals, 496. 498.
[2] Carte, iv. 23. Neville's memorial, above mentioned, was read in the house, May, 14.
[3] Carte, iv. 19, 20. Bacon, i. 695. C. J. 462.
[4] C. J. 506. Carte. 23. This writer absurdly defends the prerogative of laying impositions on merchandise as part of the *law of nations*.
[5] It is said that, previously to taking this step, the king sent for the commons, and tore all their bills before their faces in the banqueting-house at Whitehall. D'Israeli's Character of James, p. 158, on the authority of an unpublished letter.
[6] Carte. Wilson. Camden's Annals of James I. (in Kennet. ii. 643.

their utmost extent, must have considerably enriched the exchequer. It is said by Carte that some Dutch merchants paid fines to the amount of 133,000*l.* for exporting gold coin. (Carte iv. p. 56.) But still greater profit was hoped from the requisition of that more than half involuntary contribution, miscalled a benevolence. It began by a subscription of the nobility and principal persons about the court. Letters were sent to the sheriffs and magistrates, directing them to call on people of ability. It had always been supposed doubtful whether the statute of Richard III. abrogating "exactions, called benevolences," extend to voluntary gifts at the solicitation of the crown. The language used in that act certainly implies that the pretended benevolences of Edward's reign had been extorted against the subjects' will; yet, if positive violence were not employed, it seems difficult to find a legal criterion by which to distinguish the effects of willing loyalty from those of fear or shame. Lord Coke is said to have at first declared, that the king could not solicit a benevolence from his subjects, but to have afterwards retracted his opinion, and pronounced in favour of its legality. To this second opinion he adheres in his Reports. (12 Reports, 119.) While this business was pending, Mr. Oliver St. John wrote a letter to the mayor of Marlborough, explaining his reasons for declining to contribute, founded on several statutes which he deemed applicable, and on the impropriety of particular men opposing their judgment to the commons in parliament, who had refused to grant any subsidy. This argument, in itself exasperating, he followed up by somewhat blunt observations on the king. His letter came under the consideration of the star-chamber, where the offence having been severely descanted upon by the attorney-general, Mr. St. John was sentenced to a fine of 5,000*l.*, and to imprisonment during pleasure. (State Trials, ii. 889.)

Coke, though still much at the council-board, was regarded with increasing dislike on account of his uncompromising humour. This he had occasion to display in perhaps the worst and most tyrannical act of king James's reign, the prosecution of one Peacham, a minister in Somersetshire for high treason. A sermon had been found in this man's study (it does not appear what led to the search), never preached, nor, if judge Coke is right, intended to be preached, containing such sharp censures upon the king, and invectives against the government, as, had they been published, would have amounted to a seditious libel. But common sense revolted at construing it into treason, under the statute of Edward III., as a compassing of the king's death. James, however, took it up with indecent eagerness. Peacham was put to the rack, and examined upon various interrogatories, as it is expressed by secretary Winwood, "before torture, in torture, between torture, and after torture." Nothing could be drawn from him as to any accomplices, nor any explanation of his design in writing the sermon; which was probably but an intemperate effusion, so common among the puritan clergy. It was necessary, therefore, to rely on this, as the overt act of treason. Aware of the difficulties that attended this course, the king directed Bacon previously to confer with the judges of the king's bench, one by one, in order to secure their determination for the crown. Coke objected that "such particular, and as he called it,

auricular taking of opinions was not according to the custom of this realm."[1] The other three judges having been tampered with, agreed to answer such questions concerning the case as the king might direct to be put to them; yielding to the sophism that every judge was bound by his oath to give counsel to his majesty. The chief-justice continued to maintain his objection to this separate closeting of judges; yet finding himself abandoned by his colleagues, consented to give answers in writing, which seem to have been merely evasive. Peacham was brought to trial, and found guilty, but not executed, dying in prison a few months after.[2]

It was not long before the intrepid chief-justice incurred again the council's displeasure. This will require, for the sake of part of my readers, some little previous explanation. The equitable jurisdiction, as it is called, of the court of chancery appears to have been derived from that extensive judicial power which, in early times, the king's ordinary council had exercised. The chancellor, as one of the highest officers of state, took a great share in the council's business; and when it was not sitting, he had a court of his own, with jurisdiction in many important matters, out of which process to compel appearance of parties might at any time emanate. It is not unlikely therefore that redress, in matters beyond the legal province of the chancellor, was occasionally given through the paramount authority of this court. We find the council and the chancery named together in many remonstrances of the commons against this interference with private rights, from the time of Richard II. to that of Henry VI. It was probably in the former reign that the chancellor began to establish systematically his peculiar restraining jurisdiction. This originated in the practice of feoffeements to uses, by which the feoffee, who had legal seisin of the land, stood bound by private engagement to suffer another, called the cestui que use, to enjoy its use and possession. Such fiduciary estates were well known to the Roman jurists, but inconsistent with the feudal genius of our law. The courts of justice gave no redress, if the feoffee to uses violated his trust by detaining the land. To remedy this, an ecclesiastical chancellor devised the writ of subpœna, compelling him to answer upon oath as to his trust. It was evidently necessary also to restrain him from proceeding, as he might do, to obtain possession; and this gave rise to injunctions, that is, prohibitions to sue at law, the violation of which was punishable by imprisonment as a contempt of court. Other instances of breach of trust occurred in personal contracts, and others wherein, without any trust, there was a wrong committed beyond the competence of the courts of law to redress; to all

[1] There had, however, been instances of it, as in sir Walter Raleigh's case. Lodge, iii. 172 173.; and I have found proofs of it in the queen's reign; though I cannot at present quote my authority. In a former age, the judges had refused to give an extra-judicial answer to the king. Lingard, v. 382. from the year-book, Pasch. 1. H. 7. 15. Trin. 1.

[2] State Trials, ii. 869. Bacon, ii. 483. &c. Dalrymple's Memorials of James I., vol. i. p. 56. Some other very unjustifiable constructions of the law of treason took place in this reign. Thomas Owen was indicted and found guilty, under the statute of Edward III., for saying, that "the king, being excommunicated (*i. e.* if he should be excommunicated) by the pope, might be lawfully deposed and killed by any one, which killing would not be murder, being the execution of the supreme sentence of the pope;" a position very atrocious, but not amounting to treason. State Trials, ii. 879. And Williams, another papist, was convicted of treason by a still more violent stretch of law, for writing a book predicting the king's death in the year 1621. Id. 1085.

which the process of subpœna was made applicable. This extension of a novel jurisdiction was partly owing to a fundamental principle of our common law, that a defendant cannot be examined; so that, if no witness or written instrument could be produced to prove a demand, the plaintiff was wholly debarred of justice; but in a still greater degree to a strange narrowness and scrupulosity of the judges, who, fearful of quitting the letter of their precedents, even with the clearest analogies to guide them, repelled so many just suits, and set up rules of so much hardship, that men were thankful to embrace the relief held out by a tribunal acting in a more rational spirit. This error the common lawyers began to discover, in time to resume a great part of their jurisdiction in matters of contract, which would otherwise have escaped from them. They made too an apparently successful effort to recover their exclusive authority over real property, by obtaining a statute for turning uses into possession; that is, for annihilating the fictitious estate of the feoffee to uses, and vesting the legal as well as equitable possession in the cestui que use. But this victory, if I may use such an expression, since it would have freed them, in a most important point, from the chancellor's control, they threw away by one of those timid and narrow constructions which had already turned so much to their prejudice; and the permitted trust-estates, by the introduction of a few more words into a conveyance, to maintain their ground, contradistinguished from the legal seisin, under the protection and guarantee, as before, of the courts of equity.

The particular limits of this equitable jurisdiction were as yet exceedingly indefinite. The chancellors were generally prone to extend them; and being at the same time ministers of state in a government of very arbitrary temper, regarded too little that course of precedent by which the other judges held themselves so strictly bound. The cases reckoned cognisable in chancery grew silently more and more numerous; but with little overt opposition from the courts of law, till the time of sir Edward Coke. That great master of the common law was inspired not only with the jealousy of this irregular and encroaching jurisdiction which all lawyers seem to have felt, but with a tenaciousness of his own dignity, and a personal enmity towards Egerton, who held the great seal. It happened that an action was tried before him, the precise circumstances of which do not appear, wherein the plaintiff lost the verdict, in consequence of one of his witnesses being artfully kept away. He had recourse to the court of chancery, filing a bil against the defendant to make him answer upon oath, which he refused to do, and was committed for contempt. Indictments were upon this preferred, at Coke's instigation, against the parties who had filed the bill in chancery, their counsel and solicitors, for suing in another court after judgment obtained at law; which was alleged to be contrary to the statute of præmunire. But the grand jury, though pressed, as is said, by one of the judges, threw out these indictments. The king, already incensed with Coke, and stimulated by Bacon, thought this too great an insult upon his chancellor to be passed over. He first directed Bacon and others to search for precedents of cases where relief had been given in chancery after judgment at law. They reported that there was a series of such precedents from the time of Henry VIII.;

and some where the chancellor had entertained suits even after execution. The attorney-general was directed to prosecute in the star-chamber those who had preferred the indictments; and as Coke had not been ostensibly implicated in the business, the king contented himself with making an order in the council-book, declaring the chancellor not to have exceeded his jurisdiction.[1]

The chief-justice almost at the same time gave another provocation, which exposed him more directly to the court's resentment. A cause happened to be argued in the court of king's bench, wherein the validity of a particular grant of a benefice to a bishop to be held in commendam, that is, along with his bishopric, came into question; and the counsel at the bar, besides the special points of the case, had disputed the king's general prerogative of making such a grant. The king, on receiving information of this, signified to the chief-justice through the attorney-general, that he would not have the court proceed to judgment till he had spoken with them. Coke requested that similar letters might be written to the judges of all the courts. This having been done, they assembled, and by a letter subscribed with all their hands, certified his majesty, that they were bound by their oaths not to regard any letters that might come to them contrary to law, but to do the law notwithstanding; that they held with one consent the attorney-general's letter to be contrary to law, and such as they could not yield to, and that they had proceeded according to their oath to argue the cause.

The king, who was then at Newmarket, returned answer that he would not suffer his prerogative to be wounded, under pretext of the interest of private persons; that it had already been more boldly dealt with in Westminster Hall than in the reigns of preceding princes, which popular and unlawful liberty he would no longer endure; that their oath not to delay justice was not meant to prejudice the king's prerogative; concluding that out of his absolute power and authority royal he commanded them to forbear meddling any farther in the cause till they should hear his pleasure from his own mouth. Upon his return to London, the twelve judges appeared as culprits in the council-chamber. The king set forth their misdemeanours, both in substance and in the tone of their letter. He observed that the judges ought to check those advocates who presume to argue against his prerogative; that the popular lawyers had been the men, ever since his accession, who had trodden in all parliaments upon it, though the law could never be respected if the king were not reverenced; that he had a double prerogative—whereof the one was ordinary, and had relation to his private interest, which might be and was every day disputed in Westminster Hall; the other was of a higher nature, referring to his supreme and imperial power and sovereignty, which ought not to be disputed or handled in vulgar argument; but that of late the courts of common law are grown so vast and transcendent, as they did both meddle with the king's prerogative, and had encroached upon all other courts of justice. He commented on the form of the letter, as highly indecent;

[1] Bacon, ii. 500. 518. 522. Cro. Jac. 335. 343. Blackstone says, "it is universally admitted that Coke was in the wrong." The meaning of this is, that the court of chancery has been successful in the struggle for jurisdiction, and that the court of King's Bench has not.

certifying him merely what they had done, instead of submitting to his princely judgment what they should do.

After this harangue the judges fell upon their knees, and acknowledged their error as to the form of the letter. But Coke entered on a defence of the substance, maintaining the delay required to be against the law and their oaths. The king required the chancellor and attorney-general to deliver their opinions; which, as may be supposed, were diametrically opposite to those of the chief-justice. These being heard, the following question was put to the judges: Whether, if at any time, in a case depending before the judges, his majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly? They all, except the chief-justice, declared that they would do so, and acknowledged it to be their duty; Hobart, chief-justice of the common-pleas, adding that he would ever trust the justice of his majesty's commandment. But Coke only answered that when the case should arise, he would do what should be fit for a judge to do. The king dismissed them all with a command to keep the limits of their several courts, and not suffer his prerogative to be wounded; for he well knew the true and ancient common law to be the most favourable to kings of any law in the world, to which law he advised them to apply their studies.[1]

The behaviour of the judges in this inglorious contention was such as to deprive them of every shadow of that confidence which ought to be reposed in their integrity. Hobart, Doddridge, and several more, were men of much consideration for learning; and their authority in ordinary matters of law is still held high. But having been induced by a sense of duty, or through the ascendency that Coke had acquired over them, to make a show of withstanding the court, they behaved like cowardly rebels, who surrender at the first discharge of cannon; and prostituted their integrity and their fame through dread of losing their offices, or rather perhaps of incurring the unmerciful and ruinous penalties of the star-chamber.

The government had nothing to fear from such recreants; but Coke was suspended from his office, and not long afterwards dismissed.[2] Having, however, fortunately in this respect, married his daughter to a brother of the duke of Buckingham, he was restored in about three years to the privy-council, where his great experience in business rendered him useful; and had the satisfaction of voting for an enormous fine on his enemy the earl of Suffolk, late high-treasurer, convicted in the star-chamber of embezzlement.[3] In the parliament of 1621, and still more conspicuously in that of 1628, he became, not without some honourable inconsistency of doctrine as well as practice, the strenuous asserter of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid

[1] Bacon, ii. 517. &c. Carte, iv. 35. Biograph. Brit. art. Coke. The king told the judges, he thought his prerogative as much wounded if it be publicly disputed upon, as if any sentence were given against it.

[2] See D'Israeli, Character of James I. p. 125. He was too much affected by his dismissal from office.

[3] Camden's Annals of James I. in Kennet, vol. ii. Wilson, ibid. 704. 705. Bacon's Works, ii. 574. The fine imposed was 40,000*l.*; Coke voted for 100,000*l.*

and patriotic old age, the faults which we cannot avoid perceiving in his earlier life.

The unconstitutional and usurped authority of this odious tribunal overrode every personal right, though an assembled parliament might assert its general privileges. Several remarkable instances in history illustrate its tyranny and contempt of all known laws and liberties. Two puritans having been committed by the high-commission court, for refusing the oath ex-officio, employed Mr. Fuller, a bencher of Gray's Inn, to move for their habeas corpus; which he did on the ground that the high commissioners were not empowered to commit any of his majesty's subjects to prison. This being reckoned a heinous offence he was himself committed, at Bancroft's instigation, (whether by the king's personal warrant, or that of the council-board, does not appear,) and lay in gaol to the day of his death; the archbishop constantly opposing his discharge for which he petitioned.[1] Whitelock, a barrister, and afterwards a judge, was brought before the star-chamber on the charge of having given a private opinion to his client, that a certain commission issued by the crown was illegal. This was said to be a high contempt and slander of the king's prerogative. But, after a speech from Bacon in aggravation of this offence, the delinquent was discharged on a humble submission. (State Trials, ii. 765.) Such too was the fate of a more distinguished person on a still more preposterous accusation. Selden, in his History of Tithes, had indirectly weakened the claim of divine right, which the high-church faction pretended, and had attacked the argument from prescription, deriving their legal institution from the age of Charlemagne, or even a later era. Not content with letting loose on him some staunch polemical writers, the bishops prevailed on James to summon the author before the council. This proceeding is as much the disgrace of England, as that against Galileo nearly at the same time is of Italy. Selden, like the great Florentine astronomer, bent to the rod of power, and made rather too submissive an apology for entering on this purely historical discussion.[2]

Every generous mind must reckon the treatment of Arabella Stuart among the hard measures of despotism, even if it were not also grossly in violation of English law. Exposed by her high descent and ambiguous pretensions to become the victim of ambitious designs wherein she did not participate, that lady may be added to the sad list of royal sufferers who have envied the lot of humble birth. There is not, as I believe, the least particle of evidence that she was engaged in the intrigues of the catholic party to place her on the throne. I was, however, thought a necessary precaution to put her in confinement a short time before the queen's death. (Carte, iii. 698.) At the trial of Raleigh she was present; and Cecil openly acquitted her of any share in the conspiracy.[3] She enjoyed afterwards a pension from the king, and might have died in peace and obscurity, had she not conceived an unhappy attachment for Mr. Seymour, grandson of that earl of Hertford, himself so memorable an example of the perils of

[1] Fuller's Church Hist. 56. Neal, i. 435. Lodge, iii. 344.
[2] Collier, 712. 717. Selden's Life in Biographia Brit.
[3] State Trials, ii. 23. Lodge's Illustrations, iii. 317.

ambitious love. They were privately married; but on the fact transpiring, the council, who saw with jealous eyes the possible union of two dormant pretensions to the crown, committed them to the Tower. (Winwood, iii. 201, 279.) They both made their escape; but Arabella was arrested and brought back. Long and hopeless calamity broke down her mind; imploring in vain the just privileges of an Englishwoman, and nearly in want of necessaries, she died in prison, and in a state of lunacy, some years afterwards.[1] And this through the oppression of a kinsman, whose advocates are always vaunting his goodnature! Her husband became the famous marquis of Hertford, the faithful counsellor of Charles the First, and partaker of his adversity. Lady Shrewsbury, aunt to Arabella, was examined on suspicion of being privy to her escape; and for refusing to answer the questions put to her, or, in other words, to accuse herself, was sentenced to a fine of 20,000*l.*, and discretionary imprisonment. (State Trials, ii. 769.)

Several events, so well known that it is hardly necessary to dwell on them, aggravated the king's unpopularity during this parliamentary interval. The murder of Overbury burst into light, and revealed to an indignant nation the king's unworthy favourite, the earl of Somerset, and the hoary pander of that favourite's vices, the earl of Northampton, accomplices in that deep-laid and deliberate atrocity. Nor was it only that men so flagitious should have swayed the councils of this country, and rioted in the king's favour. Strange things were whispered, as if the death of Overbury was connected with something that did not yet transpire, and which every effort was employed to conceal, The people, who had already attributed prince Henry's death to poison, now laid it at the door of Somerset; but for that conjecture, however highly countenanced at the time, there could be no foundation. The symptoms of the prince's illness, and the appearances on dissection, are not such as could result from any poison, and manifestly indicate a malignant fever, aggravated perhaps by injudicious treatment.[2] Yet

[1] Winwood 178. In this collection are letters from Arabella, which show her to have been a lively and accomplished woman. It is said in a manuscript account of circumstances about the king's accession, which seems entitled to some credit, that on its being proposed that she should walk at the queen's funeral, she answered with spirit, that as she had been debarred her majesty's presence while living, she would not be brought on the stage as a public spectacle, after her death. Sloane MSS. 827.

Much occurs on the subject of this lady's imprisonment in one of the valuable volumes in Dr. Birch's hand writing, among the same MSS. 4161. Those have already assisted Mr. D'Israeli in his interesting memoir on Arabella Stuart, in the Curiosities of Literature, New Series, vol. i. They cannot be read (as I should conceive, though Mr. D'Israeli seems so to have read them) without indignation at James and his ministers. One of her letters is addressed to the two chief-justices, begging to be brought before them by habeas corpus, being informed that it is designed to remove her far from those courts of justice where she ought to be tried and condemned, or cleared, to remote parts, whose courts she holds unfitted for her offence. "And if your lordships may not or will not grant unto me the ordinary relief of a distressed subject, then I beseech you become humble intercessors to his majesty, that I may receive such benefit of justice, as both his majesty by his oath hath promised, and the laws of this realm afford to all others, those of his blood not excepted. And though, unfortunate woman! I can obtain neither, yet I beseech your lordships retain me in your good opinion, and judge charitably till I be proved to have committed any offence either against God or his majesty deserving so long restraint or separation from my lawful husband."

Arabella did not profess the Roman catholic religion, but that party seem to have relied upon her; and so late as 1610, she incurred some "suspicion of being collapsed." Winwood, ii. 117.

This had been also conjectured in the queen's lifetime. Secret Correspondence of Cecil with James I. p. 118.

[2] Sir Charles Cornwallis's Memoir of Prince Henry, reprinted in the Somers Tracts, vol. ii.

it is certain that a mystery hangs over this scandalous tale of Overbury's murder. The insolence and menaces of Somerset in the Tower, the shrinking apprehensions of him which the king could not conceal, the pains taken by Bacon to prevent his becoming desperate, and, as I suspect, to mislead the hearers by throwing them on a wrong scent, are very remarkable circumstances to which, after a good deal of attention, I can discover no probable clue. But it is evident that he was master of some secret, which it would have highly prejudiced the king's honour to divulge.[1]

and of which sufficient extracts may be found in Birch's life, contains a remarkably minute detail of all the symptoms attending the prince's illness, which was an epidemic typhus fever. The report of his physicians after dissection may also be read in many books. Nature might possibly have overcome the disorder, if an empirical doctor had not insisted on continually bleeding him. He had no other murderer. We need not even have recourse to Hume's acute and decisive remark that, if Somerset had been so experienced in this trade, he would not have spent five months in bungling about Overbury's death.

Carte says, vol. iv. 33., that the queen charged Somerset with designing to poison her, prince Charles, and the elector palatine, in order to marry the electress to lord Suffolk's son. But this is too extravagant, whatever Anne might have thrown out in passion against a favourite she hated. On Henry's death, the first suspicion fell of course on the papists. Winwood, iii. 410. Burnet doubts whether his aversion to popery did not hasten his death. And there is a remarkable letter from sir Robert Naunton to Winwood, in the note of the last reference, which shows that suspicions of some such agency were entertained very early. But the positive evidence we have of his disease outweighs all conjecture.

[1] The circumstances to which I allude are well known to the curious in English history, and might furnish materials for a separate dissertation, had I leisure to stray in these by-paths. Hume has treated them as quite unimportant; and Carte, with his usual honesty, has never alluded to them. Those who read carefully the new edition of the State Trials, and various passages in lord Bacon's Letters, may form for themselves the best judgment they can. A few conclusions may perhaps be laid down as established. 1. That Overbury's death was occasioned, not merely by lady Somerset's revenge, but by his possession of important secrets, which in his passion he had threatened Somerset to divulge. 2. That Somerset conceived himself to have a hold over the king by a possession of the same or some other secrets, and used indirect threats of revealing them. 3. That the king was in the utmost terror at hearing of these measures; as is proved by a passage in Weldon's Memoirs, p. 115., which, after being long ascribed to his libellous spirit, has lately received the most entire confirmation by some letters from More, lieutenant of the Tower, published in the Archæologia, vol. xviii. 4. That Bacon was in the king's confidence, and employed by him so to manage Somerset's trial, as to prevent him from making any imprudent disclosure, or the judges from getting any insight into that which it was not meant to reveal. See particularly a passage in his letter to Coke, vol. ii. 514., beginning, "This crime was second to none but the powder-plot."

Upon the whole, I cannot satisfy myself in any manner as to this mystery. Prince Henry's death, as I have observed, is out of the question; nor does a different solution, hinted by Harris and others, and which may have suggested itself to the reader, appear probable to my judgment on weighing the whole case. Overbury was an ambitious, unprincipled man; and it seems more likely than any thing else, that James had listened too much to some criminal suggestion from him and Somerset; but of what nature I cannot pretend even to conjecture; and that through apprehension of this being disclosed, he had pusillanimously acquiesced in the scheme of Overbury's murder.

It is a remarkable fact, mentioned by Burnet, and perhaps little believed, but which, like the former, has lately been confirmed by documents printed in the Archæologia, that James in the last year of his reign, while dissatisfied with Buckingham, privately renewed his correspondence with Somerset, on whom he bestowed at the same time a full pardon, and seems to have given him hopes of being restored to his former favour. A memorial drawn up by Somerset, evidently at the king's command, and most probably after the clandestine interview reported by Burnet, contains strong charges against Buckingham. Archæologia, vol. xvii. 280. But no consequences resulted from this; James was either reconciled to his favourite before his death, or felt himself too old for a struggle. Somerset seems to have tampered a little with the popular party in the beginning of the next reign. A speech of sir Robert Cotton's in 1625, Parl. Hist. ii. 145., praises him, comparatively at least with his successor in royal favour; and he was one of those against whom informations were brought in the star-chamber for dispersing sir Robert Dudley's famous proposal for bridling the impertinences of parliament. Kennet, iii. 62. The patriots, however, of that age had too much sense to encumber themselves with an ally equally unserviceable and infamous. There cannot be the slightest doubt of Somerset's guilt as to the murder, though some have thought the evidence insufficient; (Carte, iv. 34.) he does not deny it in his remarkable letter to James, requesting, or rather demanding, mercy, printed in the Cabala, and in Bacon's Works.

Sir Walter Raleigh's execution was another stain upon the reputation of James the First. It is needless to mention that he fell under a sentence passed fifteen years before, on a charge of high treason in plotting to raise Arabella Stuart to the throne. It is very probable that this charge was, partly at least, founded in truth;[1] but his conviction was obtained on the single deposition of lord Cobham, an accomplice, a prisoner, not examined in court, and known to have already retracted his accusation. Such a verdict was thought contrary to law, even in that age of ready convictions. It was a severe measure to detain for twelve years in prison so splendid an ornament of his country, and to confiscate his whole estate.[2] For Raleigh's conduct in the expedition to Guiana, there is not much excuse to make. Rashness and want of foresight were always among his failings; else he would not have undertaken a service of so much hazard without obtaining a regular pardon for his former offence. But it might surely be urged that either his commission was absolutely null, or that it operated as a pardon; since a man attainted of treason is incapable of exercising that authority which is conferred upon him.[3] Be this as it may, no technical reasoning could overcome the moral sense that revolted at carrying the original sentence into execution. Raleigh might be amenable to punishment for the deception by which he had obtained a commission, that ought never to have issued; but the nation could not help seeing in his death the sacrifice of the bravest and most renowned of Englishmen to the vengeance of Spain.[4]

[1] Raleigh made an attempt to destroy himself on being committed to the Tower; which of course affords a presumption of his consciousness that something could be proved against him. Cayley's Life of Raleigh, vol. ii. p. 10. Hume says, it appears from Sully's Memoirs that he had offered his services to the French ambassador. I cannot find this in Sully; whom Raleigh, however, and his party seem to have aimed at deceiving by false information. Nor could there be any treason in making an interest with the minister of a friendly power. Carte quotes the despatches of Beaumont, the French ambassador, to prove the connexion of the conspirators with the Spanish plenipotentiary. But it may be questioned whether he knew any more than the government gave out. If Raleigh had ever shown a discretion bearing the least proportion to his genius, we might reject the whole story as improbable. But it is to be remembered that there had long been a catholic faction, who fixed their hopes on Arabella; so that the conspiracy, though extremely injudicious, was not so perfectly unintelligible as it appears to a reader of Hume, who has overlooked the previous circumstances. It is also to be considered, that the king had shown so marked a prejudice against Raleigh on his coming to England, and the hostility of Cecil was so insidious and implacable, as might drive a man of his rash and impetuous courage to desperate courses. See Cayley's Life of Raleigh, vol. ii.; a work containing much interesting matter, but unfortunately written too much in the spirit of an advocate, which, with so faulty a client, must tend to an erroneous representation of facts.

[2] This estate was Sherborn castle, which Raleigh had not very fairly obtained from the see of Salisbury. He settled this before his conviction upon his son; but an accidental flaw in the deed enabled the king to wrest it from him, and bestow it on the earl of Somerset. Lady Raleigh, it is said, solicited his majesty on her knees to spare it; but he only answered, "I mun have the land, I mun have it for Carr." He gave him, however, 12,000*l.* instead. But the estate was worth 5000*l.* per annum. This ruin of the prospects of a man far too intent on aggrandisement impelled him once more into the labyrinth of fatal and dishonest speculations. Cayley, 89, &c. Somers' Tracts, ii. 22. &c. Curiosities of Literature, New Series, vol. ii. It has been said, that Raleigh's unjust conviction made him in one day the most popular, from having been the most odious, man in England. He was certainly such under Elizabeth. This is a striking, but by no means solitary, instance of the impolicy of political persecution.

[3] Rymer, xvi, 789. He was empowered to name officers, to use martial law, &c.

[4] James made it a merit with the court of Madrid, that he had put to death a man so capable of serving him merely to give them satisfaction. Somers' Tracts, ii. 437. There is even reason to suspect that he betrayed the secret of Raleigh's voyage to Gondomar, before he sailed. Hardwicke, State Papers, i. 398. It is said in Mr. Cayley's Life of Raleigh that his fatal mistake in not securing a pardon under the great seal was on account of the expense. But the king would have made some difficulty at least about granting it.

This unfortunate predilection for the court of Madrid had always exposed James to his subjects' jealousy. They connected it with an inclination at least to tolerate popery, and with a dereliction of their commercial interests. But from the time that he fixed his hopes on the union of his son with the infanta,[1] the popular dislike to Spain increased in proportion to his blind preference. If the king had not systematically disregarded the public wishes, he could never have set his heart on this impolitic match; contrary to the wiser maxim he had laid down in his own Basilicon Doron, never to seek a wife for his son, except in a protestant family. But his absurd pride made him despise the uncrowned princes of Germany. This Spanish policy grew much more odious after the memorable events of 1619, the election of the king's son-in-law to the throne of Bohemia, his rapid downfall, and the conquest of the Upper Palatinate by Austria. If James had listened to some sanguine advisers, he would in the first instance have supported the pretensions of Frederic. But neither his own views of public law nor true policy dictated such an interference. The case was changed after the loss of his hereditary dominions, and the king was sincerely desirous to restore him to the Palatinate; but he unreasonably expected that he could effect this through the friendly mediation of Spain, while the nation, not perhaps less unreasonably, were clamorous for his attempting it by force of arms. In this agitation of the public mind, he summoned the parliament that met in February 1621.[2]

The king's speech on opening the session was like all he had made on former occasions, full of hopes and promises, taking cheerfully his share of the blame as to past disagreements, and treating them as little likely to recur, though all their causes were still in operation.[3] He displayed, however, more judgment than usual in the commencement of this parliament. Among the methods devised to compensate the want of subsidies, none had been more injurious to the subject than patents of monopoly, including licences for exclusively carrying on certain trades. Though the government was principally responsible for the exactions they connived at, and from which they reaped a large benefit, the popular odium fell of course on the monopolists. Of these the most obnoxious was sir Giles Mompesson, who, having obtained a patent for gold and silver thread, sold it of baser metal.

[1] This project began as early as 1605. Winwood, vol. ii. The king had hopes that the United Provinces would acknowledge the sovereignty of Prince Henry and the infanta on their marriage; and Cornwallis was directed to propose this formally to the court of Madrid. Id. p. 401. But Spain would not cede the point of sovereignty; nor was this scheme likely to please either the states-general or the court of France.

In the later negotiation about the marriage of prince Charles, those of the council who were known or suspected catholics, Arundel, Worcester, Digby, Weston, Calvert, as well as Buckingham, whose connexions were such, were in the Spanish party. Those reputed to be jealous protestants were all against it. Wilson, in Kennet, ii. 725. Many of the former were bribed by Gondomar. Id. and Rushworth, i. 19.

[2] The proclamation for this parliament contains many of the unconstitutional directions to the electors, contained, as has been seen, in that of 1604, though shorter. Rymer, xvii. 270.

[3] "Deal with me as I shall desire at your hands," &c. "He knew not," he told them, "the laws and customs of the land when he first came, and was misled by the old counsellors whom the old queen had left;"—he owns that at the last parliament there was "a strange kind of beast called undertaker," &c. Parl. Hist. i. 1180. Yet this coaxing language was oddly mingled with sallies of his pride and prerogative notions. It is evidently his own composition, not Bacon's. The latter, in granting the speaker's petitions, took the high tone so usual in this reign, and directed the house of commons like a schoolmaster. Bacon's Works, i. 701.

This fraud seems neither very extraordinary nor very important; but he had another patent for licensing inns and alehouses, wherein he is said to have used extreme violence and oppression. The house of commons proceeded to investigate Mompesson's delinquency. Conscious that the crown had withdrawn its protection, he fled beyond sea. One Michell, a justice of peace, who had been the instrument of his tyranny, fell into the hands of the commons, who voted him incapable of being in the commission of the peace, and sent him to the Tower.[1] Entertaining, however, upon second thoughts, as we must presume, some doubts about their competence to inflict this punishment, especially the former part of it, they took the more prudent course, with respect to Mompesson, of appointing Noy and Hakewill to search for precedents in order to show how far and for what offences their power extended to punish delinquents against the state, as well as those who offended against that house. The result appears some days after, in a vote that "they must join with the lords for punishing sir Giles Mompesson; it being no offence against our particular house, or any member of it, but a general grievance." (Deb. of Commons 103. 109.)

The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords, was that of lord Latimer in the year 1376. The latest hitherto was that of the duke of Suffolk in 1449; for a proceeding against the bishop of London in 1534, which has sometimes been reckoned an instance of parliamentary impeachment, does not by any means support that privilege of the commons.[2] It had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings; and partly from the preference the Tudor princes had given to bills of attainder, or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject. The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly. It was not indeed conducted according to all the forms of an impeachment. The commons, requesting a conference with the other house, informed them generally of that person's offence, but did not exhibit any distinct articles at their bar. The lords took up themselves the inquiry; and having become satisfied of his guilt, sent a message to the commons, that they were ready to pronounce sentence. The speaker accordingly, attended by all the house, demanded judgment at the bar: when the lords passed as heavy a sentence as could be awarded for any misdemeanour; to which the king, by a stretch of prerogative, which no one was then inclined to call in question, was pleased to add perpetual banishment. (Debates in 1621, p. 114. 228. 229.)

The impeachment of Mompesson was followed up by others against

[1] Debates of Commons in 1621, vol. i. p. 84. I quote the two volumes published at Oxford in 1766: they are abridged in the new Parliamentary History.

[2] The commons in this session complained to the lords, that the bishop of London (Stokesley) had imprisoned one Philips on suspicion of heresy. Some time afterwards, they called upon him to answer their complaint. The bishop laid the matter before the lords, who all declared that it was unbecoming for any lord of parliament to make answer to any one in that place; "quod non consentaneum fuit aliquem procerum prædictorum alicui in eo loco responsurum." Lords' Journal, i. 71. The lords, however, in 1701, (State Trials, xiv. 275.) seem to have recognised this as a case of impeachment.

Michell, the associate in his iniquities; against sir John Bennet, judge of the prerogative court, for corruption in his office; and against Field, bishop of Llandaff, for being concerned in a matter of bribery. (Debates in 1621, passim.) The first of these was punished; but the prosecution of Bennet seems to have dropped in consequence of the adjournment, and that of the bishop ended in a slight censure. But the wrath of the commons was justly roused against that shameless corruption which characterizes the reign of James beyond every other in our history. It is too well known, how deeply the greatest man of that age was tarnished by the prevailing iniquity. Complaints poured in against the chancellor Bacon for receiving bribes from suitors in his court. Some have vainly endeavoured to discover an excuse, which he did not pretend to set up, and even ascribed the prosecution to the malevolence of sir Edward Coke. (Carte.) But Coke took no prominent share in this business; and though some of the charges against Bacon may not appear very heinous, especially for those times, I know not whether the unanimous conviction of such a man, and the conscious pusillanimity of his defence, do not afford a more irresistible presumption of his misconduct, than any thing specially alleged. He was abandoned by the court, and had previously lost, as I rather suspect, Buckingham's favour; but the king, who had a sense of his transcendent genius, remitted the fine of 40,000*l.* imposed by the lords, which he was wholly unable to pay.[1]

There was much to commend in the severity practised by the house towards public delinquents; such examples being far more likely to prevent the malversation of men in power than any law they could enact. But in the midst of these laudable proceedings, they were

[1] Clarendon speaks of this impeachment as an unhappy precedent, made to gratify a private displeasure. This expression seem rather to point to Buckingham, than to Coke; and some letters of Bacon to the favourite at the time of his fall display a consciousness of having offended him. Yet Buckingham had much more reason to thank Bacon as his wisest counsellor, than to assist in crushing him. In his works, vol. i. p. 712., is a tract, entitled "Advice to the duke of Buckingham, containing instructions for his governance as minister." These are marked by the deep sagacity and extensive observation of the writer. One passage should be quoted in justice to Bacon. "As far as it may lie in you, let no arbitrary power be intruded, the people of this kingdom love the laws thereof, and nothing will oblige them more than a confidence of the free enjoying of them: what the nobles upon an occasion once said in parliament, 'Nolumus leges Angliæ mutari,' is imprinted in the hearts of all the people." I may add, that with all Bacon's pliancy, there are fewer overstrained expressions about the prerogative in his political writings than we should expect. His practice was servile, but his principles were not unconstitutional. We have seen how strongly he urged the calling of parliament in 1614: and he did the same, unhappily for himself, in 1621. Vol. ii. p. 580. He refused also to set the great seal to an office intended to be erected for enrolling prentices, a speculation apparently of some monopolists; writing a very proper letter to Buckingham, that there was no ground of law for it. P. 555.

I am very loth to call Bacon, for the sake of Pope's antithesis, "the meanest of mankind." Who would not wish to believe the feeling language of his letter to the king, after the attack on him had already begun? "I hope I shall not be found to have the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may be frail, and partake of the abuses of the times." P. 589. Yet the general discsteem of his contemporaries speaks forcibly against him. Sir Simon d'Ewes and Weldon, both indeed bitter men, give him the worst of characters. "Surely," says the latter, "never so many parts and so base and abject a spirit tenanted together in any one earthen cottage as in this man." It is a striking proof of the splendour of Bacon's genius, that it was unanimously acknowledged in his own age, amidst so much that should excite contempt. He had indeed ingratiated himself with every preceding parliament, through his incomparable ductility: having taken an active part in their complaints of grievances in 1604, before he became attorney-general, and even on many occasions afterwards, while he held that office, having been intrusted with the management of conferences on the most delicate subjects. In 1614, the commons after voting

hurried by the passions of the moment into an act of most unwarrantable violence. It came to the knowledge of the house that one Floyd, a gentleman confined in the Fleet prison, had used some slighting words about the elector palatine and his wife. It appeared in aggravation, that he was a Roman catholic. Nothing could exceed the fury into which the commons were thrown by this very insignificant story. A flippant expression, below the cognisance of an ordinary court, grew at once into a portentous offence, which they ransacked their invention to chastise. After sundry novel and monstrous propositions, they fixed upon the most degrading punishment they could devise. Next day, however, the chancellor of the exchequer delivered a message, that the king, thanking them for their zeal, but desiring that it should not transport them to inconveniences, would have them consider, whether they could sentence one who did not belong to them, nor had offended against the house, or any member of it; and whether they could sentence a denying party, without the oath of witnesses; referring them to an entry on the rolls of parliament in the first year of Henry IV., that the judicial power of parliament does not belong to the commons. He would have them consider whether it would not be better to leave Floyd to him, who would punish him according to his fault.

This message put them into some embarrassment. They had come to a vote in Mompesson's case, in the very words employed in the king's message, confessing themselves to have no jurisdiction, except over offences against themselves. The warm speakers now controverted this proposition with such arguments as they could muster; Coke, though from the reported debates he seems not to have gone the whole length, contending that the house was a court of record, and that it consequently had power to administer an oath. (Debates in 1621, vol. ii. p. 7.) They returned a message by the speaker, excepting to the record in 1 H. 4., because it was not an act of parliament to bind them, and persisting, though with humility, in their first votes. (Debates, p. 14.) The king replied mildly; urging them to show precedents, which they were manifestly incapable of doing. The lords requested a conference, which they managed with more temper, and notwithstanding the solicitude displayed by the commons to maintain their pretended right, succeeded in withdrawing the matter to their own jurisdiction. This conflict of privileges was by no means of service to the unfortunate culprit; the lords perceived that they could not mitigate the sentence of the lower house without reviving their dispute, and vindicated themselves from all suspicion of indifference towards the cause of the

that the attorney-general ought not to be elected to parliament, made an exception in favour of Bacon. Journals, p. 460. "I have been always gracious in the lower house," he writes to James in 1616, begging for the post of chancellor; "I have interest in the gentlemen of England, and shall be able to do some good effect in rectifying that body of parliament-men, which is cardo rerum." Vol. ii. p. 496.

I shall conclude this note by observing, that, if all lord Bacon's philosophy had never existed, there would be enough in his political writings to place him among the greatest men this country has produced.

[1] In a former parliament of this reign, the commons having sent up a message, wherein they entitled themselves the knights, citizens, burgesses, and barons of the commons' court of parliament, the lords sent them word that they would never acknowledge any man that sitteth in the lower house to have the right or title of a baron of parliament; nor could admit the term of the commons' court of parliament; "because all your house together, without theirs, doth make no court of parliament." 4th Mar. 1606. Lords' Journals. Nevertheless the lords did

Palatinate by augmenting its severity. Floyd was adjudged to be degraded from his gentility, and to be held an infamous person; his testimony not to be received; to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse's tail, and the tail in his hand, and there to stand two hours in the pillory, and to be branded in the forehead with the letter K; to ride four days afterwards in the same manner to Westminster, and there to stand two hours more in the pillory, with words on a paper in his hat showing his offence; to be whipped at the cart's tail from the Fleet to Westminster Hall; to pay a fine of 5000*l.*, and to be a prisoner in Newgate during his life. The whipping was a few days after remitted on prince Charles's motion; but he seems to have undergone the rest of the sentence. There is surely no instance in the annals of our own, and hardly of any civilized country, where a trifling offence, if it were one, has been visited with such outrageous cruelty. The cold-blooded deliberate policy of the lords is still more disgusting than the wild fury of the lower house.[1]

This case of Floyd is an unhappy proof of the disregard that popular assemblies, when inflamed by passion, are ever apt to show for those principles of equity and moderation by which, however the sophistry of contemporary factions may set them aside, a calm judging posterity will never fail to measure their proceedings. It has contributed at least, along with several others of the same kind, to inspire me with a jealous distrust of that indefinable, uncontrollable privilege of parliament, which has sometimes been asserted, and perhaps with rather too much encouragement from those whose function it is to restrain all exorbitant power. I speak only of the extent to which theoretical principles have been carried, without insinuating that the privileges of the house of commons have been practically stretched in late times beyond their constitutional bounds. Time and the course of opinion have softened down those high pretensions, which the dangers of liberty under James the First, as well as the natural character of a popular assembly, then taught the commons to assume; and the greater humanity of modern ages has made us revolt from such disproportionate punishments as were inflicted on Floyd.[2]

Every thing had hitherto proceeded with harmony between the king and parliament. His ready concurrence in their animadversion on Mompesson and Michell, delinquents who had acted at least with the connivance of government, and in the abolition of monopolies, seemed

not scruple, almost immediately afterwards, to denominate their own house a court, as appears by memoranda of 27th and 28th May; they even issued a habeas corpus as from a court, to bring a servant of the earl of Bedford before them. So also in 1609, 16th and 17th of Feb. and on April 14th and 18th, 1614: and probably later, if search were made.

I need hardly mention, that the barons mentioned above, as part of the commons, were the members for the cinque ports, whose denomination is recognised in several statutes.

[1] Debates in 1621, vol. i. p. 355., &c. vol. ii. p. 5., &c. Mede writes to his correspondent on May 11. that the execution had not taken place; "but I hope it will." The king was plainly averse to it.

[2] The following observation on Floyd's case, written by Mr. Harley, in a manuscript account of the proceedings (Harl. MSS. 6274.), is well worthy to be inserted. I copy from the appendix to the above-mentioned debates of 1621. "The following collection," he has written at the top, "is an instance how far a zeal against popery and for one branch of the royal family, which was supposed to be neglected by king James, and consequently in opposition to him, will carry people against common justice and humanity." And again at the bottom: "For the honour of Englishmen, and indeed of human nature, it were to be hoped these debates were not truly taken, there being so many motions contrary to the laws of the

to remove all discontent. The commons granted two subsidies early in the session without alloying their bounty with a single complaint of grievances. One might suppose that the subject of impositions had been entirely forgotten, not an allusion to them occurring in any debate.[1] It was voted, indeed, in the first days of the session, to petition the king about the breach of their privilege of free speech, by the imprisonment of sir Edwin Sandys, in 1614, for words spoken in the last parliament; but the house did not prosecute this matter, contenting itself with some explanation by the secretary of state.[2] They were going on with some bills for reformation of abuses, to which the king was willing to accede, when they received an intimation, that he expected them to adjourn over the summer. It produced a good deal of dissatisfaction to see their labour so hastily interrupted; especially as they ascribed it to a want of sufficient sympathy on the court's part with their enthusiastic zeal for the elector palatine. (Debates, p. 114. et alibi, passim.) They were adjourned by the king's commission after an unanimous declaration ("sounded forth," says one present, "with the voices of them all, withal lifting up their hats in their hands so high as they could hold them, as a visible testimony of their unanimous consent, in such sort, that the like had scarce ever been seen in parliament") of their resolution to spend their lives and fortunes for the defence of their own religion and of the Palatinate. This solemn protestation and pledge was entered on record in the journals. (Vol. ii. 170. 172.)

They met again after five months, without any change in their views of policy. At a conference of the two houses, lord Digby, by the king's command, explained all that had occurred in his embassy to Germany for the restitution of the Palatinate; which, though absolutely ineffective, was as much as James could reasonably expect without a war. (Id. p. 186.) He had in fact, though, according to the laxity of those times, without declaring war on any one, sent a body of troops under sir Horace Vere, who still defended the Lower Palatinate. It was necessary to vote more money, lest these should mutiny for want of pay. And it was stated to the commons in this conference, that to maintain a sufficient army in that country for one year would require 900,000*l.*; which was left to their consideration.[3] But now it was seen

land, the laws of parliament, and common justice. Robert Harley, July 14. 1702." It is remarkable, that this date is very near the time when the writer of these just observations, and the party which he led, had been straining in more than one instance the privileges of the house of commons, not certainly with such violence as in the case of Floyd, but much beyond what can be deemed their legitimate extent.

[1] In a much later period of the session, when the commons had lost their good humour, some heat was very justly excited by a petition from some brewers, complaining of an imposition of fourpence on the quarter of malt. The courtiers defended this as a composition in lieu of purveyance. But it was answered that it was compulsory, for several of the principal brewers had been committed to lay long in prison for not yielding to it. One said that impositions of this nature overthrew the liberty of all the subjects of this kingdom; and if the king may impose such taxes, then are we but villains, and lose all our liberties. It produced an order that the matter be examined before the house, the petitioners to be heard by council, and all the lawyers of the house to be present. Debates of 1621, vol. ii. 252. Journals, p. 652. But nothing farther seems to have taken place, whether on account of the magnitude of the business which occupied them during the short remainder of the session, or because a bill which passed their house to prevent illegal imprisonment, or restraint on the lawful occupation of the subject, was supposed to meet this case. It is a remarkable instance of arbitrary taxation, and preparatory to an excise.

[2] Debates of 1621, p. 14. Hatsell's Precedents, i. 133.

[3] P. 189. Lord Cranfield told the commons there were three reasons why they should give

that men's promises to spend their fortunes in a cause not essentially their own are written in the sand. The commons had no reason perhaps to suspect that the charge of keeping 30,000 men in the heart of Germany would fall much short of the estimate. Yet after long haggling they voted only one subsidy, amounting to 70,000*l.*; a sum manifestly insufficient for the first equipment of such a force. (Debates, 242. &c.) This parsimony could hardly be excused by their suspicion of the king's unwillingness to undertake the war, for which it afforded the best justification.

James was probably not much displeased at finding so good a pretext for evading a compliance with their martial humour; nor had there been much appearance of dissatisfaction on either side, (if we except some murmurs at the commitment of one of their most active members, sir Edwin Sandys, to the Tower, which was tolerably appeased by the secretary Calvert's declaration that he had not been committed for any parliamentary matter,[1]) till the commons drew up a petition and remonstrance against the growth of popery; suggesting, among other remedies for this grievance, that the prince should marry one of our own religion, and that the king would direct his efforts against that power (meaning Spain) which first maintained the war in the Palatinate. This petition was proposed by sir Edward Coke. The courtiers opposed it as without precedent; the chancellor of the duchy observing that it was of so high and transcendent a nature, he had never known the like within those walls. Even the mover defended it rather weakly, according to our notions, as intended only to remind the king, but requiring no answer. The scruples affected by the courtiers, and the real novelty of the proposition, had so great an effect, that some words were inserted, declaring that the house "did not mean to press on the king's most undoubted and royal prerogative." (P. 261. &c.) The petition, however, had not been presented, when the king, having obtained a copy of it, sent a peremptory letter to the speaker, that he had heard how some fiery and popular spirits had been emboldened to debate and argue on matters far beyond their reach or capacity, and directing him to acquaint the house with his pleasure that none therein should presume to meddle with any thing concerning his government or mysteries of state; namely, not to speak of his son's match with the princess of Spain, nor to touch the honour of that king, or any other of his friends and confederates. Sandys' commitment, he bade them be informed, was not for any misdemeanour in parliament. But to put them out of doubt of any question of that nature that may arise among

liberally. 1. That lands were now a third better than when the king came to the crown. 2. That wools, which were then 20*s.* were now 30*s.* 3. That corn had risen from 26*s.* to 36*s.* the quarter. Ibid. There had certainly been a very great increase of wealth under James, especially to the country gentlemen: of which their style of building is an evident proof. Yet in this very session complaints had been made of the want of money, and fall in the price of lands: vol. i. p. 16.; and an act was proposed against the importation of corn; vol. ii. p. 87. In fact, rents had been enormously enhanced in this reign, which the country gentlemen of course endeavoured to keep up. But corn, probably through good seasons, was rather lower in 1621, than it had been,—about 30*s.* a quarter.

1 Id. 174. 200. Compare also p. 151. Sir Thomas Wentworth appears to have discountenanced the resenting this as a breach of privilege. Doubtless the house showed great and even excessive moderation in it; for we can hardly doubt that Sandys was really committed for no other cause than his behaviour in Parliament. It was taken up again afterwards, p. 259.

them hereafter, he let them know that he thought himself very free, and able to punish any man's misdemeanours in parliament, as well during their sitting as after, which he meant not to spare upon occasion of any man's insolent behaviour in that place. He assured them that he would not deign to hear their petition if it touched on any of those points which he had forbidden. (Debates, 284.)

The house received this message with unanimous firmness, but without any undue warmth. A committee was appointed to draw up a petition, which in the most decorous language, and with strong professions of regret at his majesty's displeasure, contained a defence of their former proceedings, and hinted very gently, that they could not conceive his honour and safety, or the state of the kingdom, to be matters at any time unfit for their deepest consideration in time of parliament. They adverted more pointedly to that part of the king's message which threatened them for liberty of speech, calling it their ancient and undoubted right, and an inheritance received from their ancestors, which they again prayed him to confirm. (P. 289.) His answer, though considerably milder than what he had designed, gave indications of a resentment not yet subdued. He dwelt at length on their unfitness for entering on matters of government, and commented with some asperity even on their present apologetical petition. In the conclusion he observed that "although he could not allow of the style, calling their privileges an undoubted right and inheritance, but could rather have wished that they had said that their privileges were derived from the grace and permission of his ancestors and himself—for most of them had grown from precedent, which rather shows a toleration than inheritance—yet he gave them his royal assurance, that as long as they contained themselves within the limits of their duty, he would be as careful to maintain their lawful liberties and privileges as he would his own prerogative; so that their house did not touch on that prerogative, which would enforce him or any just king to retrench their privileges." (P. 317.)

This explicit assertion, that the privileges of the commons existed only by sufferance, and conditionally upon good behaviour, exasperated the house far more than the denial of their right to enter on matters of state. In the one, they were conscious of having somewhat transgressed the boundaries of ordinary precedents; in the other, their individual security, and their very existence as a deliberative assembly, were at stake. Calvert, the secretary, and the other ministers, admitted the king's expressions to be incapable of defence, and called them a slip of the pen at the close of a long answer. (P. 330.) The commons were not to be diverted by any such excuses from their necessary duty of placing on record a solemn claim of right. Nor had a letter from the king, addressed to Calvert, much influence; wherein, while he reiterated his assurances of respecting their privileges, and tacitly withdrew the menace that rendered them precarious, he said that he could not with patience endure his subjects to use such anti-monarchical words to him concerning their liberties, as "ancient and undoubted right and inheritance," without subjoining that they were granted by the grace and favour of his predecessors. (P. 339.) After a long and warm debate, they entered on record in the

journals their famous protestation of Dec. 18th, 1621, in the following words:—

"The commons now assembled in parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, amongst others not herein mentioned, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defence of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses, every member of the house hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same: that the commons in parliament have like liberty and freedom to treat of those matters, in such order as in their judgments shall seem fittest: and that every such member of the said house hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the house itself), for or concerning any bill, speaking, reasoning, or declaring of any matter or matters, touching the parliament or parliament business; and that, if any of the said members be complained of, and questioned for any thing said or done in parliament, the same is to be showed to the king, by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information." (Debates 359.)

This protestation was not likely to pacify the king's anger. He had already pressed the commons to make an end of the business before them, under pretence of wishing to adjourn them before Christmas, but probably looking to a dissolution. They were not in a temper to regard any business, least of all to grant a subsidy, till this attack on their privileges should be fully retracted. The king therefore adjourned, and in about a fortnight after dissolved, them. But in the interval, having sent for the journal book, he erased their last protestation with his own hand; and published a declaration of the causes which had provoked him to this unusual measure, alleging the unfitness of such a protest, after his ample assurance of maintaining their privileges, the irregular manner in which, according to him, it was voted, and its ambiguous and general wording, which might serve in future times to invade most of the prerogatives annexed to the imperial crown. In his proclamation for dissolving the parliament, James recapitulated all his grounds of offences; but finally required his subjects to take notice that it was his intention to govern them as his progenitors and predecessors had done, and to call a parliament again on the first convenient occasion.[1] He immediately followed up this dissolution of parliament by dealing his vengeance on its most conspicuous leaders: sir Edward Coke and sir Robert Philips were committed to the Tower; Mr. Pym, and one or two more, to other prisons; sir Dudley Digges, and several who were somewhat less obnoxious than the former, were

[1] Rymer, xvii. 344. Parl. Hist. Carte, 93. Wilson.

sent on a commission to Ireland, as a sort of honourable banishment.[1] The earls of Oxford and Southampton underwent an examination before the council; and the former was committed to the Tower on pretence of having spoken words against the king. It is worthy of observation that, in this session, a portion of the upper house had united in opposing the court. Nothing of this kind is noticed in former parliaments, except perhaps a little on the establishment of the reformation. In this minority were considerable names—Essex, Southampton, Warwick, Oxford, Saye, Spencer. Whether a sense of public wrongs, or their particular resentments, influenced these noblemen, their opposition must be reckoned an evident sign of the change that was at work in the spirit of the nation, and by which no rank could be wholly unaffected.[2]

James, with all his reputed pusillanimity, never showed any signs of fearing popular opinion. His obstinate adherence to the marriage treaty with Spain was the height of political rashness in so critical a state of the public mind. But what with elevated notions of his prerogative and of his skill in government on the one hand, what with a confidence in the submissive loyalty of the English on the other, he seems constantly to have fancied that all opposition proceeded from a small troublesome faction, whom if he could any way silence, the rest of his people would at once repose in a dutiful reliance on his wisdom. Hence he met every succeeding parliament with as sanguine hopes as if he had suffered no disappointment in the last. The nation was however, wrought up at this time to an alarming pitch of discontent. Libels were in circulation about 1621, so bitterly malignant in their censures of his person and administration, that two hundred years might seem, as we read them, to have been mistaken in their date.[3] Heedless however of this growing odium, James continued to solicit the affected coyness of the court of Madrid. The circumstances of that negotiation belong to general history.[4] It is only necessary to

[1] Besides the historians, see Cabala, part ii. p. 155. (4to edit.); D'Israeli's Character of James I., p. 125.; and Mede's Letters, Harl. MSS. 389.

[2] Wilson's History of James I. in Kennet, ii. 747. 749. Thirty-three peers, Mr. Joseph Mede tells us in a letter of Feb. 24. 1621. (Harl. MSS. 389.), "signed a petition to the king which they refused to deliver to the council, as he desired, nor even to the prince, unless he would say he did not receive it as a councillor; whereupon the king sent for lord Oxford, and asked him for it; he, according to previous agreement, said he had it not; then he sent for another, who made the same answer: at last they told him they had resolved not to deliver it unless they were admitted all together. Whereupon his majesty, wonderfully incensed, sent them all away re infectâ, and said that he would come into parliament himself, and bring them all to the bar." This petition, I believe, did not relate to any general greivances, but to a question of their own privileges, as to their precedence of Scots peers. Wilson, ubi supra. But several of this large number were inspired by more generous sentiments; and the commencement of an aristocratic opposition deserves to be noticed. In another letter, written in March, Mede speaks of the good understanding between the king and parliament; he promised they should sit as long as they like, and hereafter he would have a parliament every three years. "Is not this good if it be true? . . . . But certain it is that the lords stick wonderful fast to the commons, and all take great pains."

The entertaining and sensible biographer of James has sketched the characters of these Whig peers. Aikin's James I., ii. 238.

[3] One of these may be found in the Somers Tracts, ii. 470., entitled Tom Tell-truth, a most malignant ebullition of disloyalty, which the author must have risked his neck as well as ears in publishing. Some outrageous reflections on the personal character of the king could hardly be excelled by modern licentiousness. Proclamations about this time against excess of lavish speech in matters of state, Rymer, xvii. 275. 514., and against printing or uttering seditious and scandalous pamphlets, Id. 522. 616., show the tone and temper of the nation.

[4] The letters on this subject, published by lord Hardwicke, State Papers, vol. i., are highly

remind the reader that the king was induced, during the residence of prince Charles and the duke of Buckingham in Spain, to swear to certain private articles, some of which he had already promised before their departure, by which he bound himself to suspend all penal laws affecting the catholics, to permit the exercise of their religion in private houses, and to procure from parliament, if possible, a legal toleration. This toleration, as preliminary to the entire re-establishment of popery, had been the first great object of Spain in the treaty. But that court, having protracted the treaty for years, in order to extort more favourable terms, and interposed a thousand pretences, became the dupe of its own artifices; the resentment of a haughty minion overthrowing with ease the painful fabric of this most tedious negotiation.

Buckingham obtained a transient and unmerited popularity by thus averting a great public mischief, which rendered the next parliament unexpectedly peaceable. The commons voted three subsidies and three fifteenths, in value about 300,000*l.*;[1] but with a condition, proposed by the king himself, that, in order to ensure its application to naval and military armaments, it should be paid into the hands of treasurers appointed by themselves, who should issue money only on the warrant of the council of war. He seemed anxious to tread back the steps made in the former session, not only referring the highest matters of state to their consideration, but promising not to treat for peace without their advice. They, on the other hand, acknowledged themselves most bound to his majesty for having been pleased to require their humble advice in a case so important, not meaning, we may be sure, by these courteous and loyal expressions, to recede from what they had claimed in the last parliament as their undoubted right.[2]

The most remarkable affair in this session was the impeachment of the earl of Middlesex, actually lord treasurer of England, for bribery and other misdemeanours. It is well known that the prince of Wales and duke of Buckingham instituted this prosecution to gratify the latter's private pique, against the wishes of the king, who warned them they would live to have their fill of parliamentary impeachment. It was conducted by managers on the part of the commons in a very

important; and being unknown to Carte and Hume, render their narratives less satisfactory. Some pamphlets of the time, in the second volume of the Somers Tracts, may be read with interest; and Howell's Letters, being written from Madrid during the prince of Wales's residence, deserve notice. See also Wilson in Kennet, p. 750. et post. Dr. Lingard has illustrated the subject lately, ix. 271.

[1] Hume, and many other writers on the side of the crown, assert the value of a subsidy to have fallen from 70,000*l.*, at which it had been under the Tudors, to 55,000*l.*, or a less sum. But though I will not assert a negative too boldly, I have no recollection of having found any good authority for this; and it is surely too improbable to be lightly credited. For admit that no change was made in each man's rate according to the increase of wealth and diminution of the value of money, the amount must at least have been equal to what it had been; and to suppose the contributors to have prevailed on the assessors to underrate them is rather contrary to common fiscal usage. In one of Mede's letters, which of course I do not quote as decisive, it is said that the value of a subsidy was *not above* 80,000*l.*; and that the assessors were directed (this was in 1621) not to follow former books, but value every man's estate according to their knowledge, and not his own confession.

[2] Parl. Hist. 1383. 1388. 1390. Carte, 119. The king seems to have acted pretty fairly in this parliament, bating a gross falsehood in denying the intended toleration of papists. He wished to get further pledges of support from parliament before he plunged into a war, and was very right in doing so. On the other hand, the prince and duke of Buckingham behaved in public towards him with great rudeness. Parl. Hist. 1396.

regular form, except that the depositions of witnesses were merely read by the clerk; that fundamental rule of English law which insists on the vivâ voce examination, being as yet unknown, or dispensed with in political trials. Nothing is more worthy of notice in the proceedings upon this impeachment than what dropped from sir Edwin Sandys, in speaking upon one of the charges. Middlesex had laid an imposition of 3*l.* per ton on French wines, for taking off which he received a gratuity. Sandys, commenting on this offence, protested in the name of the commons, that they intended not to question the power of imposing claimed by the king's prerogative: this they touched not upon now; they continued only their claim, and when they should have occasion to dispute it, would do so with all due regard to his majesty's state and revenue. (Parl. Hist. 1421.) Such cautious and temperate language, far from indicating any disposition to recede from their pretensions, is rather a proof of such united steadiness and discretion as must ensure their success. Middlesex was unanimously convicted by the peers.[1] His impeachment was of the highest moment to the commons; as it restored for ever that salutary constitutional right which the single precedent of lord Bacon might have been insufficient to establish against the ministers of the crown.

The two last parliaments had been dissolved without passing a single act, except the subsidy bill of 1621. An interval of legislation for thirteen years was too long for any civilized country. Several statutes were enacted in the present session, but none so material as that for abolishing monopolies for the sale of merchandize, or for using any trade.[2] This is of a declaratory nature, and recites that they are already contrary to the ancient and fundamental laws of the realm. Scarce any difference arose between the crown and the commons. This singular calm might probably have been interrupted, had not the king put an end to the session. They expressed some little dissatisfaction at this step, (P. H. 1483), and presented a list of grievances, one only of which is sufficiently considerable to deserve notice; namely, the proclamations already mentioned in restraint of building about London, whereof they complain in very gentle terms, considering their obvious illegality and violation of private right. (Id. 1488.)

The commons had now been engaged, for more than twenty years, in a struggle to restore and to fortify their own and their fellow subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against monopolies. But they had rescued from disuse their ancient right of impeachment. They had placed on record a protestation of their claim to debate all matters of public concern. They had remonstrated against the usurped prerogatives of binding the subject by proclamation, and of

[1] Clarendon blames the impeachment of Middlesex for the very reason which makes me deem it a fortunate event for the constitution, and seems to consider him as a sacrifice to Buckingham's resentment. Hacket also, the biographer of Williams, takes his part. Carte, however, thought him guilty, p. 116.; and the unanimous vote of the peers is much against him, since that house was not wholly governed by Buckingham. See too the Life of Nicholas Farrar in Wordsworth's Ecclesiastical Biography, vol. iv.; where it appears that that pious and conscientious man was one of the treasurer's most forward accusers, having been deeply injured by him. It is difficult to determine the question from the printed trial.

[2] 21 Jac. 1. c. 3. See what lord Coke says on this act, and on the general subject of monopolies, 3 Inst. 181.

levying customs at the out-ports. They had secured beyond controversy their exclusive privilege of determining contested elections of their members. They had maintained, and carried indeed to an unwarrantable extent, their power of judging and inflicting punishment, even for offences not committed against their house. Of these advantages some were evidently incomplete; and it would require the most vigorous exertions of future parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class, except perhaps the clergy; from which, when viewed together with the rash pride of the court, and the uncertainty of constitutional principles and precedents, collected through our long and various history, a calm bystander might presage that the ensuing reign would not pass without disturbance, nor perhaps end without confusion.

CHAPTER VII.

ON THE ENGLISH CONSTITUTION FROM THE ACCESSION OF CHARLES I. TO THE DISSOLUTION OF HIS THIRD PARLIAMENT.

Parliament of 1625—*Its Dissolution—Another Parliament called—Prosecution of Buckingham—Arbitrary Proceedings towards the Earls of Arundel and Bristol—Loan demanded by the King—Several committed for Refusal to contribute—They sue for a Habeas Corpus—Arguments on this Question, which is decided against them—A Parliament called in* 1628—*Petition of Right—King's Reluctance to grant it—Tonnage and Poundage disputed—King dissolves Parliament—Religious Differences—Prosecution of Puritans by Bancroft—Growth of High-Church Tenets—Differences as to the Observance of Sunday—Arminian Controversy—State of Catholics under James—Jealousy of the Court's Favour towards them—Unconstitutional Tenets promulgated by the High-Church Party—General Remarks.*—pp. 266–297.

CHARLES the First had much in his character very suitable to the times in which he lived, and to the spirit of the people he was to rule; a stern and serious deportment, a disinclination to all licentiousness, and a sense of religion that seemed more real than in his father.[1] These qualities we might suppose to have raised some expectation of him, and to have procured at his accession some of that popularity, which is rarely withheld from untried princes. Yet it does not appear that he enjoyed even this first transient sunshine of his subjects' affection. Solely intent on retrenching the excesses of prerogative, and well aware that no sovereign would voluntarily recede from the possession of power, they seem to have dreaded to admit into their bosoms

[1] The general temperance and chastity of Charles, and the effect those virtues had in reforming the outward face of the court, are attested by many writers, and especially by Mrs. Hutchinson, whose good word he would not have undeservedly obtained. Mem. of Col. Hutchinson, p. 65. I am aware that he was not the perfect saint as well as martyr which his panegyrists represent him to have been; but it is an unworthy office, even for the purpose of throwing ridicule on exaggerated praise, to turn the microscope of history on private life.

any sentiments of personal loyalty which might enervate their resolution. And Charles took speedy means to convince them that they had not erred in withholding their confidence.

Elizabeth in her systematic parsimony, James in his averseness to war, had been alike influenced by a consciousness, that want of money alone could render a parliament formidable to their power. None of the irregular modes of supply were ever productive enough to compensate for the clamour they occasioned; after impositions and benevolences were exhausted, it had always been found necessary, in the most arbitrary times of the Tudors, to fall back on the representatives of the people. But Charles succeeded to a war, at least to the preparation of a war, rashly undertaken through his own weak compliance, the arrogance of his favourite, and the generous or fanatical zeal of the last parliament. He would have perceived it to be manifestly impossible, if he had been capable of understanding his own position, to continue this war without the constant assistance of the house of commons, or to obtain that assistance without very costly sacrifices of his royal power. It was not the least of this monarch's imprudences, or rather of his blind compliances with Buckingham, to have not only commenced hostilities against Spain, which he might easily have avoided,[1] and persisted in them for four years, but entered on a fresh war with France, though he had abundant experience to demonstrate the impossibility of defraying its charges.

The first parliament of this reign has been severely censured on account of the penurious supply it doled out for the exigencies of a war in which its predecessors had involved the king. I will not say that this reproach is wholly unfounded. A more liberal proceeding, if it did not obtain a reciprocal concession from the king, would have put him more in the wrong. But according to the common practice and character of all such assemblies, it was preposterous to expect subsidies equal to the occasion, until a foundation of confidence should be laid between the crown and parliament. The commons had begun probably to repent of their hastiness in the preceding year, and to discover that Buckingham and his pupil, or master, which shall we say? had conspired to deceive them.[2] They were not to forget that none of the chief grievances of the last reign were yet redressed, and that supplies must be voted slowly and conditionally if they would hope for reformation. Hence they made their grant of tonnage and poundage to last but for a year instead of the king's life, as had for two centuries been the practice; on which account the upper house rejected the bill. (Parl. Hist. vol. ii. p. 6.) Nor would they have refused a further supply, beyond the two subsidies (about 140,000*l.*) which they had granted, had some tender of redress been made by the crown; and were actually

[1] War had not been declared at Charles's accession, nor at the dissolution of the first parliament. In fact, he was much more set upon it than his subjects. Hume, and all his school, keep this out of sight.

[2] Hume has disputed this, but with little success, even on his own showing. He observes, on an assertion of Wilson, that Buckingham lost his popularity after Bristol arrived, because he proved that the former, while in Spain, had professed himself a papist,—that it is false, and *was never said by Bristol.* It is singular, that Hume should know so positively what Bristol did not say in 1624, when it is notorious that he said in parliament what nearly comes to the same thing in 1626. See a curious letter in Cabala, p. 224., showing what a combination had been formed against Buckingham, of all descriptions of malecontents.

in debate upon the matter, when interrupted by a sudden dissolution. (Parl. Hist. vol. ii. 33.)

Nothing could be more evident, by the experience of the late reign as well as by observing the state of public spirit, than that hasty and premature dissolutions or prorogations of parliament served but to aggravate the crown's embarassments. Every successive house of commons inherited the feelings of its predecessor, without which it would have ill represented the prevalent humour of the nation. The same men, for the most part, came again to parliament more irritated and desperate of reconciliation with the sovereign than before. Even the politic measure, as it was fancied to be, of excluding some of the most active members from seats in the new assembly, by nominating them sheriffs for the year, failed altogether of the expected success; as it naturally must in an age when all ranks partook in a common enthusiasm.[1] Hence the prosecution against Buckingham, to avert which Charles had dissolved his first parliament, was commenced with redoubled vigour in the second. It was too late, after the precedents of Bacon and Middlesex, to dispute the right of the commons to impeach a minister of state. The king, however, anticipating their resolves, after some sharp speeches only had been uttered against his favourite, sent a message that he would not allow any of his servants to be questioned among them, much less such as were of eminent place, and near unto him. He saw, he said, that some of them aimed at the duke of Buckingham, whom, in the last parliament of his father, all had combined to honour and respect, nor did he know what had happened since to alter their affections; but he assured them that the duke had done nothing without his own special direction and appointment. This haughty message so provoked the commons that, having no express testimony against Buckingham, they came to a vote that common fame is a good ground of proceeding either by inquiry, or presenting the complaint to the king or lords; nor did a speech from the lord-keeper, severely rating their presumption, and requiring on the king's behalf that they should punish two of their members who had given him offence by insolent discourses in the house, lest he should be compelled to use his royal authority against them; nor one from the king himself, bidding them "remember that parliaments were altogether in his power for their calling, sitting, and dissolution; therefore, as he found the fruits of them good or evil, they were to continue to be or not to be,"[2] tend to pacify or to intimidate the assembly. They addressed the king in very decorous language, but asserting "the ancient, constant, and undoubted right and usage of parliaments to

[1] The language of lord-keeper Coventry in opening the session was very ill-calculated for the spirit of the commons: "If we consider aright, and think of that incomparable distance between the supreme height and majesty of a mighty monarch and the submissive awe and lowliness of loyal subjects, we cannot but receive exceeding comfort and contentment in the frame and constitution of this highest court, wherein not only the prelates, nobles, and grandees, but the commons of all degrees have their part; and wherein that high majesty doth descend to admit, or rather to invite, the humblest of his subjects to conference and counsel with him," &c. He gave them a distinct hint afterwards that they must not expect to sit long. Parl. Hist. 39.

[2] Parl. Hist. 60. I know of nothing under the Tudors of greater arrogance than this language. Sir Dudley Carleton, accustomed more to foreign negotiations than to an English house of commons, gave very just offence by descanting on the misery of the people in other countries. "He cautioned them not to make the king out of love with parliaments, by

question and complain of all persons, of what degree soever, found grievous to the commonwealth, in abusing the power and trust committed to them by their sovereign." The duke was accordingly impeached at the bar of the house of peers on eight articles, many of them probably well-founded; yet as the commons heard no evidence in support of them, it was rather unreasonable in them to request that he might be committed to the Tower.

In the conduct of this impeachment, two of the managers, sir John Eliot and sir Dudley Digges, one the most illustrious confessors in the cause of liberty whom that time produced, the other, a man of much ability, and a useful supporter of the popular party, though not exempt from some oblique views towards promotion, gave such offence by words spoken, or alleged to be spoken, in derogation of his majesty's honour, that they were committed to the Tower. The commons of course resented this new outrage. They resolved to do no more business till they were righted in their privileges. They denied the words imputed to Digges; and, thirty-six peers asserting that he had not spoken them, the king admitted that he was mistaken, and released both their members.[1] He had already broken in upon the privileges of the house of lords, by committing the earl of Arundel to the Tower during the session; not upon any political charge, but, as was commonly surmised, on account of a marriage which his son had made with a lady of royal blood. Such private offences were sufficient in those arbitrary reigns, to expose the subject to indefinite imprisonment, if not to an actual sentence in the star-chamber. The lords took up this detention of one of their body, and after formal examination of precedents by a committee, came to a resolution, "that no lord of parliament, the parliament sitting, or within the usual times of privilege of parliament, is to be imprisoned or restrained without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety for the peace." This assertion of privilege was manifestly warranted by the co-extensive liberties of the commons. After various messages between the king and lords, Arundel was ultimately set at liberty. (Parl. Hist. 125. Hatsell, 141.)

This infringement of the rights of the peerage was accompanied by another not less injurious, the refusal of a writ of summons to the earl of Bristol. The lords were justly tenacious of this unquestionable privilege of their order, without which its constitutional dignity and

incroaching on his prerogative; for in his messages he had told them, that he must then use new councils. In all Christian kingdoms there were parliaments anciently, till the monarchs seeing their turbulent spirits, stood upon their prerogatives, and overthrew them all, except with us. In foreign countries the people look not like ours, with store of flesh on their backs; but like ghosts, being nothing but skin and bones, with some thin cover to their nakedness, and wearing wooden shoes on their feet; a misery beyond expression, and that we are yet free from; and let us not lose the repute of a free-born nation by our turbulency in parliament." Rushworth.

This was a hint, in the usual arrogant style of courts, that the liberties of the people depended on favour, and not on their own determination to maintain them.

[1] Parl. Hist. 119. Hatsell, i. 147. Lords' Journals. A few peers refused to join in this.

Dr. Lingard has observed that the opposition in the house of lords was headed by the earl of Pembroke, who had been rather conspicuous in the late reign, and whose character is drawn by Clarendon in the first book of his history. He held ten proxies in the king's first parliament as Buckingham did thirteen. Lingard, ix. 328. In the second Pembroke had only five, but the duke still came with thirteen. Lords' Journals, p. 491. This enormous accumulation of suffrages in one person led to an order of the house, which is now its established regulation, that no peer can hold more than two proxies. Lords' Journals, p. 507.

independence could never be maintained. Whatever irregularities or uncertainty of legal principle might be found in earlier times as to persons summoned only by writ without patents of creation, concerning whose hereditary peerage there is much reason to doubt, it was beyond all controversy that an earl of Bristol holding his dignity by patent was entitled of right to attend parliament. The house necessarily insisted upon Bristol's receiving his summons, which was sent him with an injunction not to comply with it by taking his place. But the spirited earl knew that the king's constitutional will expressed in the writ ought to outweigh his private command, and laid the secretary's letter before the house of lords. The king prevented any further interference in his behalf by causing articles of charge to be exhibited against him by the attorney-general, whereon he was committed to the Tower. These assaults on the pride and consequence of an aristocratic assembly, from whom alone the king could expect effectual support, display his unfitness, not only for the government of England, but of any other nation. Nor was his conduct towards Bristol less oppressive than impolitic. If we look at the harsh and indecent employment of his own authority and even testimony, to influence a criminal process against a man of approved and untainted worth,[1] and his sanction of charges which, if Bristol's defence be as true as it is now generally admitted to be, he must have known to be unfounded, we shall hardly concur with those candid persons who believe that Charles would have been an excellent prince in a more absolute monarchy. Nothing in truth can be more preposterous than to maintain, like Clarendon and Hume, the integrity and innocence of lord Bristol, together with the sincerity and humanity of Charles the First. Such inconsistencies betray a determination in the historian to speak of men according to his preconceived affection or prejudice, without so much as attempting to reconcile these sentiments to the facts, which he can neither deny nor excuse.[2]

Though the lords petitioned against a dissolution, the king was determined to protect his favourite, and rescue himself from the importunities of so refractory a house of commons.[3] Perhaps he had

[1] Mr. Brodie has commented rather too severely on Bristol's conduct, vol. ii. p. 109. That he was "actuated merely by motives of self-aggrandizement," is surely not apparent; though he might be more partial to Spain than we may think right, or even though he might have some bias towards the religion of Rome. The last however is by no means proved; for the king's word is no proof in my eyes.

[2] See the proceedings on the mutual charges of Buckingham and Bristol in Rushworth, or the Parliamentary History. Charles's behaviour is worth noticing. He sent a message to the house, desiring that they would not comply with the earl's request of being allowed counsel; and yielded ungraciously when the lords remonstrated against the prohibition. Parl. Hist. 97. 132. The attorney-general exhibited articles against Bristol as to facts depending in great measure on the king's sole testimony. Bristol petitioned the house "to take into consideration of what consequence such a precedent might be; and thereon most humbly to move his majesty for the declining, at least, of his majesty's accusation and testimony." Id. 98. The house ordered two questions on this to be put to the judges: 1. Whether, in case of treason or felony, the king's testimony was to be admitted or not? 2. Whether words spoken to the prince, who is after king, make any alteration in the case? They were ordered to deliver their opinions three days afterwards. But when the time came, the chief-justice informed the house, that the attorney-general had communicated to the judges his majesty's pleasure, that they should forbear to give an answer. Id. 103. 106.

Hume says, "Charles himself was certainly deceived by Buckingham, when he corroborated his favourite's narrative by his testimony." But no assertion can be more gratuitous; the supposition indeed is impossible.

[3] Parl. Hist. 193. If the following letter is accurate, the privy-council themselves were against this dissolution: "Yesterday the lords sitting in council at Whitehall to argue whether

already taken the resolution of governing without the concurrence of parliaments, though he was induced to break it the ensuing year. For the commons having delayed to pass a bill for the five subsidies they had voted in this session, till they should obtain some satisfaction for their complaints, he was left without any regular supply. This was not wholly unacceptable to some of his counsellors, and probably to himself; as affording a pretext for those unauthorised demands which the advocates of arbitrary prerogative deemed more consonant to the monarch's honour. He had issued letters of privy seal, after the former parliament, to those in every county, whose names had been returned by the lord lieutenant as most capable, mentioning the sum they were required to lend, with a promise of repayment in eighteen months. (Rushworth, Kennet.) This specification of a particular sum was reckoned an unusual encroachment, and a manifest breach of the statute against arbitrary benevolences; especially as the names of those who refused compliance were to be returned to the council. But the government now ventured on a still more outrageous stretch of power. They first attempted to persuade the people that as subsidies had been voted in the house of commons, they should not refuse to pay them, though no bill had been passed for that purpose. But a tumultuous cry was raised in Westminster-hall from those who had been convened, that they would pay no subsidy but by authority of parliament.[1] This course, therefore, was abandoned for one hardly less unconstitutional. A general loan was demanded from every subject, according to the rate at which he was assessed in the last subsidy. The commissioners appointed for the collection of this loan received private instructions to require not less than a certain proportion of each man's property in lands or goods, to treat separately with every one, to examine on oath

the parliament should be dissolved or not, were all with one voice against the dissolution of it; and to-day, when the lord-keeper drew out the commission to have read it, they sent four of their own body to his majesty to let him know how dangerous this abruption would be to the state, and beseech him the parliament might sit but two days—he answered; Not a minute." 15 June, 1626. Mede's Letters, ubi supra. The author expresses great alarm at what might be the consequence of this step. Mede ascribes this to the council; but others perhaps more probably, to the house of peers. The king's expression, "not a minute," is mentioned by several writers.

[1] Mede's Letters—"On Monday the judges sat in Westminster-hall, to persuade the people to pay subsidies; but there arose a great tumultuous shout amongst them: 'A parliament! a parliament! else no subsidies!' The levying of the subsidies, verbally granted in parliament, being propounded to the subsidy men in Westminster, all of them, saving some thirty among five thousand, and they all the king's servants, cried 'A parliament! a parliament!' &c. The same was done in Middlesex on Monday also, in five or six places, but far more are said to have refused the grant. At Hicks's hall the men of Middlesex assembled there, when they had heard a speech for the purpose, made their obeisance; and so went out without any answer affirmative or negative. In Kent the whole county denied, saying that subsidies were matters of too high a nature for them to meddle withal, and that they durst not deal therewith, lest, hereafter, they might be called in question." July 22. et post. In Harleian MSS. vol. xxxvii. fol. 192., we find a letter from the king to the deputy lieutenants and justices of every county, informing them that he had dissolved the last parliament because the disordered passion of some members of that house, contrary to the good inclination of the greater and wiser sort of them, had frustrated the grant of four subsidies, and three fifteenths, which they had promised; he therefore enjoins the deputy lieutenants to cause all the troops and bands of the county to be mustered, trained, and ready to march, as he is threatened with invasion: that the justices do divide the county into districts, and appoint in each able persons to collect and receive moneys, promising the parties to employ them in the common defence; to send a list of those who contribute and those who refuse, "that we may hereby be informed who are well affected to our service, and who are otherwise." July 7, 1626. It is evident that the pretext of invasion, which was utterly improbable, was made use of in order to shelter the king's illegal proceedings.

such as should refuse, to certify the names of refractory persons to the privy council, and to admit of no excuse for abatement of the sum required. (Rushworth's Abr. i. 270.)

This arbitrary taxation (for the name of loan could not disguise the extreme improbability that the money would be repaid), so general and systematic as well as so weighty, could not be endured without establising a precedent that must have shortly put an end to the existence of parliaments. For if those assemblies were to meet only for the sake of pouring out stupid flatteries at the foot of the throne, of humbly tendering such supplies as the ministry should suggest, or even of hinting at a few subordinate grievances which touched not the king's prerogative, and absolute control in matters of state—functions which the Tudors and Stuarts were well pleased that they should exercise—if every remonstrance was to be checked by a dissolution, and chastised by imprisonment of its promoters, every denial of subsidy to furnish a justification for extorted loans, our free-born high-minded gentry would not long have brooked to give their attendance to such an ignominious assembly, and an English parliament would have become as idle a mockery of national representation as the cortes of Castile. But this kingdom was not in a temper to put up with tyranny. The king's advisers were as little disposed to recede from their attempt. They prepared to enforce it by the arm of power.[1] The common people who refused to contribute were impressed to serve in the navy. The gentry were bound by recognisance to appear at the council-table, where many of them were committed to prison. (Rushworth. Kennet.) Among these were five knights, Darnel, Corbet, Earl, Heveningham, and Hampden, who sued the court of king's bench for their writ of habeas corpus. The writ was granted; but the warden of the Fleet made return that they were detained by a warrant from the privy-council, informing him of no particular cause of imprisonment, but that they were committed by the special command of his majesty. This gave rise to a most important question, whether such a return was sufficient in law to justify the court in remitting the parties to custody. The fundamental immunity of English subjects from arbitrary detention had never before been so fully canvassed; and it is to the discussion which arose out of the case of these five gentlemen that we owe its continual assertion by

[1] The 321st volume of Hargrave MSS. p. 300., contains minutes of a debate at the council-table during the interval between the second and third parliaments of Charles, taken by a counsellor. It was proposed to lay an excise on beer; others suggested that it should be on malt, on account of what was brewed in private houses. It was then debated "how to overcome difficulties, whether by persuasion or force. Persuasion, it was thought, would not gain it; and for judicial courses, it would not hold against the subject that would stand upon the right of his own property, and against the fundamental constitutions of the kingdom. The last resort was to a proclamation; for in star-chamber it might be punishable, and thereupon it rested." There follows much more; it seemed to be agreed that there was such a necessity as might justify the imposition; yet a sort of reluctance is visible even among these timid counsellors. The king pressed it forward much. In the same volume, p. 393., we find other proceedings at the council-table, whereof the subject was the censuring or punishing of some one who had refused to contribute to the loan of 1626, on the ground of its illegality. The highest language is held by some of the conclave in this debate.

Mr. D'Israeli has collected from the same copious reservoir, the manuscripts of the British Museum, several more illustrations, both of the arbitrary proceedings of the council, and of the bold spirit with which they were resisted. Curiosities of Literature, New Series, iii. 381. But this ingenious author is too much imbued with "the monstrous faith of many made for one," and sets the private feelings of Charles for an unworthy and dangerous minion, above the liberties and interests of the nation.

parliament, and its ultimate establishment in full practical efficacy by the statute of Charles II. It was argued with great ability by Noy, Selden, and other eminent lawyers, on behalf of the claimants, and by the attorney-general Heath for the crown.

The counsel for the prisoners grounded their demand of liberty on the original basis of Magna Charta; the twenty-ninth section of which, as is well known, provides that "no free man shall be taken or imprisoned unless by lawful judgment of his peers, or the law of the land." This principle having been frequently transgressed by the king's privy council in earlier times, statutes had been repeatedly enacted, independently of the general confirmations of the charter, to redress this material grievance. Thus in the 25th of Edward III. it is provided that "no one shall be taken by petition or suggestion to the king or his counsel, unless it be (*i.e.* but only) by indictment or presentment, or by writ original at the common law." And this is again enacted three years afterwards, with little variation, and once again in the course of the same reign. It was never understood, whatever the loose language of these old statutes might suggest, that no man could be kept in custody upon a criminal charge before indictment, which would have afforded too great security to offenders. But it was the regular practice that every warrant of commitment, and every return by a gaoler to the writ of habeas corpus, must express the nature of the charge, so that it might appear whether it were no legal offence; in which case the party must be instantly set at liberty; or one for which bail ought to be taken; or one for which he must be remanded to prison. It appears also to have been admitted without controversy, though not perhaps according to the strict letter of law, that the privy-council might commit to prison on a criminal charge, since it seemed preposterous to deny that power to those entrusted with the care of the commonwealth, which every petty magistrate enjoyed. But it was contended, that they were as much bound as every petty magistrate to assign such a cause for their commitments, as might enable the court of king's bench to determine whether it should release or demand the prisoner brought before them by habeas corpus."

The advocates for this principle alleged several precedents, from the reign of Henry VII. to that of James, where persons committed by the council generally, or even by the special command of the king, had been admitted to bail on their habeas corpus. "But I conceive," said one of these, "that our case will not stand upon precedent, but upon the fundamental laws and statutes of this realm; and though the precedents look one way or the other, they are to be brought back unto the laws by which the kingdom is governed." He was aware that a pretext might be found to elude most of his precedents. The warrant had commonly declared the party to be charged on *suspicion* of treason or of felony; in which case he would of course be bailed by the court. Yet in some of these instances the words "by the king's special command," were inserted in the commitment; so that they served to repel the pretension of an arbitrary right to supersede the law by his personal authority. Ample proof was brought from the old law books that the king's command could not excuse an illegal act. "If the king command me," said one of the judges under Henry VI., "to

arrest a man, and I arrest him, he shall have an action of false imprisonment against me, though it were done in the king's presence." "The king," said chief-justice Markham to Edward IV., "cannot arrest a man upon suspicion of felony or treason, as any of his subjects may; because if he should wrong a man by such arrest, he can have no remedy against him." No verbal order of the king, nor any under his sign manual or privy signet, was a command, it was contended by Selden, which the law would recognise as sufficient to arrest or detain any of his subjects; a writ duly issued under the seal of a court being the only language in which he could signify his will. They urged further that even if the first commitment by the king's command were lawful, yet when a party had continued in prison for a reasonable time, he should be brought to answer, and not be indefinitely detained; liberty being a thing so favoured by the law that it will not suffer any man to remain in confinement for any longer time than of necessity it must.

To these pleadings for liberty, Heath, the attorney-general, replied in a speech of considerable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the judges that they were placed there to obey rather than to determine. "This commitment," he says, "is not in a legal and ordinary way, but by the special command of our lord the king, which implies not only the fact done, but so extraordinarily done, that it is notoriously his majesty's immediate act and will that it should be so." He alludes afterwards, though somewhat obscurely, to the king's absolute power, as contradistinguished from that according to law; a favourite distinction, as I have already observed, with the supporters of despotism. "Shall we make inquiries," he says, "whether his commands are lawful?—who shall call in question the justice of the king's actions, who is not to give account for them?" He argues from the legal maxim that the king can do no wrong, that a cause must be presumed to exist for the commitment, though it be not set forth. He adverts with more success to the number of papists and other state-prisoners, detained for years in custody, for mere political jealousy. "Some there were," he says, "in the Tower who were put in it when very young; should they bring a habeas corpus, would the court deliver them?" Passing next to the precedents of the other side, and condescending to admit their validity, however contrary to the tenor of his former argument, he evades their application by such distinctions as I have already mentioned.

The judges behaved during this great cause with apparent moderation and sense of its importance to the subject's freedom. Their decision, however, was in favour of the crown; and the prisoners were remanded to custody. In pronouncing this judgment the chief-justice, sir Nicholas Hyde, avoiding the more extravagant tenets of absolute monarchy, took the narrower line of denying the application of those precedents, which had been alleged to show the practice of the court in bailing persons committed by the king's special command. He endeavoured also to prove that where no cause had been expressed in the warrant, except such command as in the present instance, the judges had always remanded the parties; but with so little succes-

that I cannot perceive more than one case mentioned by him, and that above a hundred years old, which supports this doctrine. The best authority on which he had to rely was the resolution of the judges in the 34th of Elizabeth, published in Anderson's reports.[1] For though this is not grammatically worded, it seems impossible to doubt that it acknowledges the special command of the king, or the authority of the privy-council as a body, to be such sufficient warrant for a commitment as to require no further cause to be expressed, and to prevent the judges from discharging the party from custody, either absolutely or upon bail. Yet it was evidently the consequence of this decision, that every statute from the time of Magna Charta, designed to protect the personal liberties of Englishmen, became a dead letter; since the insertion of four words in a warrant (per speciale mandatum regis), which might become matter of form, would control their remedial efficacy. And this wound was the more deadly, in that the notorious cause of these gentlemen's imprisonment was their withstanding an illegal exaction of money. Every thing that distinguished our constitutional laws, all that rendered the name of England valuable, was at stake in this issue. If the judgment in the case of ship-money was more flagrantly iniquitous, it was not so extensively destructive as the present.[2]

Neither these measures, however, of illegal severity towards the uncompliant, backed as they were by a timid court of justice, nor the exhortations of a more prostitute and shameless band of churchmen, could divert the nation from its cardinal point of faith in its own prescriptive franchises. To call another parliament appeared the only practicable means of raising money for a war, in which the king persisted with great impolicy, or rather blind trust in his favourite. He consented to this with extreme unwillingness.[3] Previously to its assembling, he released a considerable number of gentlemen and others who had been committed for their refusal of the loan. These were, in many cases, elected to the new parliament; coming thither with just indignation at their country's wrongs, and pardonable resentment at their own. No year, indeed, within the memory of any one living, had witnessed such violations of public liberty as 1627. Charles seemed born to carry into daily practice those theories of absolute power, which had been promulgated from his father's lips. Even now while the writs were out for a new parliament, commissioners were appointed to raise money "by impositions or otherwise, as they should find most convenient in a case of such inevitable necessity, wherein form and circumstance must be dispensed with rather than the substance be lost and hazarded;"[4] and the levying of ship-money was already debated in the council. Anticipating, as indeed was natural, that this house of commons would correspond as ill to the

[1] See above, in chap. v. Coke himself, while chief-justice, had held that one committed by the privy-council was not bailable by any court in England. Parl. Hist. 310. He had nothing to say when pressed with this in the next parliament, but that he had misgrounded his opinion upon a certain precedent, which being nothing to the purpose, he was now assured his opinion was as little to the purpose. Id. 325. State Trials, iii. 81.

[2] State Trials, iii. 1—234. Parl. Hist. 246. 259, &c. Rushworth.

[3] At the council table, some proposing a parliament, the king said, he did abominate the name. Mede's Letters, 30th Sept. 1626.

[4] Rushworth. Mede's Letters in Harl. MSS. passim.

king's wishes as their predecessors, his advisers were preparing schemes more congenial, if they could be rendered effective, to the spirit in which he was to govern. A contract was entered into for transporting some troops and a considerable quantity of arms from Flanders into England, under circumstances at least highly suspicious, and which, combined with all the rest that appears of the court policy at that time, leaves no great doubt on the mind that they were designed to keep under the people, while the business of contribution was going forward.[1] Shall it be imputed as a reproach to the Cokes, the Seldens, the Glanvils, the Pyms, the Eliots, the Philipses, of this famous parliament, that they endeavoured to devise more effectual restraints than the law had hitherto imposed on a prince who had snapped like bands of tow the ancient statutes of the land, to remove from his presence counsellors, to have been misled by whom was his best apology, and to subject him to an entire dependence on his people for the expenditure of government, as the surest pledge of his obedience to the laws?

The principal matters of complaint taken up by the commons in this session were, the exaction of money under the name of loans; the commitment of those who refused compliance, and the late decision of the king's bench, remanding them upon a habeas corpus; the billeting of soldiers upon private persons, which had occurred in the last year, whether for convenience or for purposes of intimidation and annoyance; and the commissions to try military offenders by martial law—a procedure necessary within certain limits to the discipline of an army, but unwarranted by the constitution of this country which was little used to any regular forces, and stretched by the arbitrary spirit of the king's administration beyond all bounds.[2] These four grievances or abuses form the foundation of the Petition of Right, presented by the commons in the shape of a declaratory statute. Charles had recourse to many subterfuges in hopes to elude the passing of this law; rather perhaps through wounded pride, as we may judge from his subsequent conduct, than much apprehension that it would create a serious impediment to his despotic schemes. He tried to persuade them to acquiesce in his royal promise not to arrest any one without just cause, or in a simple confirmation of the Great Charter and other statutes in favour of liberty. The peers, too pliant in this instance to his wishes, and half receding from the patriot banner they had lately joined, lent him their aid by proposing amendments (insidious in those who suggested them, though not in the body of the house), which the commons firmly rejected.[3] Even when the bill was tendered to him for that assent

[1] Rushworth's Abr. i. 304. Cabala, part ii. 217. See what is said of this by Mr. Brodie, ii. 158.

[2] A commission addressed to lord Wimbleton, 28th Dec. 1625, empowers him to proceed against soldiers or dissolute persons joining with them, who should commit any robberies, &c. which by martial law ought to be punished with death, by such summary course as is agreeable to martial law, &c. Rymer, xviii. 254. Another in 1626, may be found, p. 763. It is unnecessary to point out how unlike these commissions are to our present mutiny bills.

[3] Bishop Williams, as we are informed by his biographer, though he promoted the Petition of Right, stickled for the additional clause adopted by the lords, reserving the king's sovereign power; which very justly exposed him to suspicion of being corrupted. For that he was so is most evident by what follows; where we are told that he had an interview with the duke of Buckingham, when they were reconciled; and "his grace had the bishop's consent with a little asking, that he would be his grace's faithful servant in the next session of parliament,

which it had been necessary for the last two centuries that the king should grant or refuse in a word, he returned a long and equivocal answer, from which it could only be collected that he did not intend to remit any portion of what he had claimed as his prerogative. But on an address from both houses for a more explicit answer, he thought fit to consent to the bill in the usual form. The commons, of whose harshness towards Charles his advocates have said so much, immediately passed a bill for granting five subsidies, about 350,000*l.*; a sum not too great for the wealth of the kingdom or for his exigencies, but considerable according to the precedents of former times, to which men naturally look.[1]

The sincerity of Charles in thus according his assent to the Petition of Right may be estimated by the following very remarkable conference which he held on the subject with his judges. Before the bill was passed, he sent for the two chief-justices, Hyde and Richardson, to Whitehall; and propounded certain questions, directing that the other judges should be assembled in order to answer them. The first question was, "Whether in no case whatsoever the king may not commit a subject without showing cause?" To which the judges gave an answer the same day under their hands, which was the next day presented to his majesty by the two chief-justices in these words: "We are of opinion that, by the general rule of law, the cause of commitment by his majesty ought to be shown; yet some cases may require such secrecy, that the king may commit a subject without showing the cause for a convenient time." The king then delivered them a second question, and required them to keep it very secret, as the former: "Whether in case a habeas corpus be brought, and a warrant from the king without any general or special cause returned, the judges ought to deliver him before they understand the cause from the king?" Their answer was as follows: "Upon a habeas corpus brought for one committed by the king, if the cause be not specially or generally returned, so as the court may take knowledge thereof, the party ought by the general rule of law to be delivered. But, if the case be such, that the same requireth secrecy, and may not presently be disclosed, the court in discretion may forbear to deliver the prisoner for a convenient time, to the end the court may be advertised of the truth thereof." On receiving this answer, the king proposed a third question: "Whether if the king grant the commons' petition, he doth not thereby exclude himself from committing or restraining a subject for any time or cause whatsoever without showing a cause?" The judges returned for answer to this important query: "Every law, after it is made, hath its exposition, and

and was allowed to hold up a seeming enmity, and his own popular estimation, that he might the sooner do the work." Hackett's Life of Williams, p. 77. 80. With such instances of baseness and treachery in the public men of this age, surely the distrust of the commons was not so extravagant as the school of Hume pretend.

[1] The debates and conferences on this momentous subject, especially on the article of the habeas corpus, occupy nearly two hundred columns in the New Parliamentary History, to which I refer the reader.

In one of these conferences, the lords, observing what a prodigious weight of legal ability was arrayed on the side of the petition, very fairly determined to hear counsel for the crown. One of these, serjeant Ashley, having argued in behalf of the prerogative in a high tone, such as had been usual in the late reign, was ordered into custody; and the lords assured the other house, that he had no authority from them for what he had said. Id. 327. A remarkable proof of the rapid growth of popular principles!

so this petition and answer must have an exposition as the case in the nature thereof shall require to stand with justice; which is to be left to the courts of justice to determine, which cannot particularly be discovered until such case shall happen. And although the petition be granted, there is no fear of conclusion as is intimated in the question." (Hargrave MSS. xxxii. 97.)

The king a very few days afterwards gave his *first* answer to the Petition of Right. For even this indirect promise of compliance, which the judges gave him, did not relieve him from apprehensions, that he might lose the prerogative of arbitrary commitment. And though, after being beaten from this evasion, he was compelled to accede in general terms to the petition, he had the absurd and audacious insincerity, for we can use no milder epithets, to circulate one thousand five hundred copies of it through the country, after the prorogation, with his first answer annexed; an attempt to deceive without the possibility of success. (Parl. Hist. 436.) But instances of such ill faith, accumulated as they are through the life of Charles, render the assertion of his sincerity a proof either of historical ignorance, or of a want of moral delicacy.

The Petition of Right, as this statute is still called, from its not being drawn in the common form of an act of parliament, after reciting the various laws which have established certain essential privileges of the subject, and enumerating the violations of them which had recently occurred, in the four points of illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law, prays the king, "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge without common consent by act of parliament; and that none be called to answer or take such oath, or to give attendance, or be confined or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman in any such manner as is before mentioned be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatever to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land."[1]

It might not unreasonably be questioned whether the language of this statute were sufficiently general to comprehend duties charged on merchandise at the out-ports, as well as internal taxes and exactions, especially as the former had received a sort of sanction, though justly deemed contrary to law, by the judgment of the court of exchequer in Bates's case. The commons however were steadily determined not to desist till they should have rescued their fellow-subjects from a burthen as unwarrantably imposed as those specifically enumerated in their Petition of Right. Tonnage and poundage, the customary grant of

[1] Stat. 3 Car. I. c. 1. Hume has printed in a note the whole statute with the preamble, which I omit for the sake of brevity, and because it may be found in so common a book.

every reign, had been taken by the present king without consent of parliament; the lords having rejected, as before mentioned, a bill that limited it to a single year. The house now prepared a bill to grant it, but purposely delayed its passing; in order to remonstrate with the king against his unconstitutional anticipation of their consent. They declared "that there ought not any imposition to be laid upon the goods of merchants, exported or imported, without common consent by act of parliament;" that tonnage and poundage, like other subsidies, sprung from the free grant of the people; that when impositions had been laid on the subjects' goods and merchandise without authority of law, which had very seldom occurred, they had, on complaint in parliament, been forthwith relieved; except in the late king's reign, who, through evil counsel, had raised the rates and charges to the height at which they then were." They conclude, after repeating their declaration that the receiving of tonnage and poundage and other impositions not granted by parliament is a breach of the fundamental liberties of this kingdom and contrary to the late Petition of Right, with most humbly beseeching his majesty to forbear any further receiving of the same, and not to take it in ill part from those of his loving subjects who should refuse to make payment of any such charges without warrant of law. (Parliament History 431.)

The king anticipated the delivery of this remonstrance by proroguing parliament. Tonnage and poundage, he told them, was what he had never meant to give away, nor could possibly do without. By this abrupt prorogation while so great a matter was unsettled, he trod back his late footsteps, and dissipated what little hopes might have arisen from his tardy assent to the petition of right. During the interval before the ensuing session, those merchants, among whom Chambers, Rolls, and Vassal are particularly to be remembered with honour, who gallantly refused to comply with the demands of the custom-house, had their goods distrained, and on suing writs of replevin, were told by the judges that the king's right, having been established in the case of Bates, could no longer be disputed. (Rushworth, Abr. i. 409.) Thus the commons reassembled, by no means less inflamed against the king's administration than at the commencement of the preceding session. Their proceedings were conducted with more than usual warmth. (Parl. Hist. 441, etc.) Buckingham's death, which had occurred since the prorogation, did not allay their resentment against the advisers of the crown. But the king, who had very much lowered his tone in speaking of tonnage and poundage, and would have been content to receive it as their grant, perceiving that they were bent on a full statutory recognition of the illegality of impositions without their consent, and that they had opened a fresh battery on another side, by mingling in certain religious disputes in order to attack some of his favourite prelates, took the step to which he was always inclined, of dissolving this third parliament.

The religious disputes to which I have just alluded are chiefly to be considered, for the present purpose, in their relation to those jealousies and resentments springing out of the ecclesiastical administration, which during the reigns of the two first Stuarts, furnished unceasing food to political discontent. James having early shown his inflexible

determination to restrain the puritans, the bishops proceeded with still more rigour than under Elizabeth. No longer thwarted, as in her time, by an unwilling council, they succeeded in exacting a general conformity to the ordinances of the church. It had been solemnly decided by the judges in the queen's reign, and in 1604, that, although the statute establishing the high-commission court did not authorize it to deprive ministers of their benefices, yet this law being only in affirmation of the queen's inherent supremacy, she might, by virtue of that, regulate all ecclesiastical matters at her pleasure, and erect courts with such powers as she should think fit. Upon this somewhat dangerous principle, archbishop Bancroft deprived a considerable number of puritan clergymen ;[1] while many more, finding that the interference of the commons in their behalf was not regarded, and that all schemes of evasion were come to an end, were content to submit to the obnoxious discipline. But their affections being very little conciliated by this coercion, there remained a large party within the bosom of the established church, prone to watch for and magnify the errors of their spiritual rulers. These men preserved the name of puritans. Austere in their lives, while many of the others were careless or irregular, learned as a body comparatively with the opposite party, implacably averse to every thing that could be construed into an approximation to popery, they acquired a degree of respect from grave men, which would have been much more general, had they not sometimes given offence by a moroseness and even malignity of disposition, as well as by a certain tendency to equivocation and deceitfulness; faults, however, which so frequently belong to the weaker party under a rigorous government that they scarcely afford a marked reproach against the puritans. They naturally fell in with the patriotic party in the house of commons, and kept up throughout the kingdom a distrust of the crown, which has never been so general in England as when connected with some religious apprehensions.

The system pursued by Bancroft and his imitators, bishops Neile and Laud, with the approbation of the king, far opposed to the healing counsels of Burleigh and Bacon, was just such as low-born and little-minded men, raised to power by fortune's caprice, are ever found to pursue. They studiously aggravated every difference, and irritated every wound. As the characteristic prejudice of the puritans was so bigoted an abhorrence of the Romish faith, that they hardly deemed its followers to deserve the name Christians, the prevailing high-church party took care to shock that prejudice by somewhat of a retrograde movement, and various seeming, or indeed real, accommodations of their tenets to those of the abjured religion. They began by preaching

[1] Cawdrey's Case, 5 Reports. Cro. Jac. 37. Neal, p. 432. The latter says, above three hundred were deprived; but Collier reduces them to forty-nine, p. 687. The former writer states the nonconformist ministers at this time in twenty-four counties to have been 754; of course the whole number was much greater, p. 434. This minority was considerable; but it is chiefly to be noticed, that it contained the more exemplary portion of the clergy; no scandalous or absolutely illiterate priest, of whom there was a very large number, being a nonconformist. This general enforcement of conformity, however it might compel the majority's obedience, rendered the separation of the incompliant more decided. Neal, 446. Many retired to Holland, especially of the Brownist or Independent denomination. Id. 436. And Bancroft, like his successor Laud, interfered to stop some who were setting out for Virginia. Id. 454.

the divine right, as it is called, or absolute indispensability, of episcopacy: a doctrine of which the first traces, as I apprehend, are found about the end of Elizabeth's reign.[1] They insisted on the necessity of episcopal succession regularly derived from the apostles. They drew an inference from this tenet, that ordinations by presbyters were in all cases null. And as this affected all the reformed churches in Europe except their own, the Lutherans not having preserved the succession of their bishops, while the Calvinists had altogether abolished that order, they began to speak of them not as brethren of the same faith, united in the same cause, and distinguished only by differences little more material than those of political commonwealths, which had been the language of the church of England ever since the Reformation, but as aliens to whom they were not at all related, and schismatics with whom they held no communion; nay, as wanting the very essence of a Christian society. This again brought them nearer, by irresistible consequence, to the disciples of Rome, whom, with becoming charity, but against the received creed of the puritans, and perhaps against their own articles, they all acknowledged to be a part of the catholic church, while they were withholding that appellation, expressly or by inference, from Heidelberg and Geneva.

The founders of the English reformation, after abolishing most of the festivals kept before that time, had made little or no change as to the mode of observance of those they retained. Sundays and holidays stood much on the same footing, as days on which no work except for good cause was to be performed, the service of the church was to be attended, and any lawful amusement might be indulged in.[2] A just distinction however soon grew up; an industrious people could spare time for very few holidays; and the more scrupulous party, while they slighted the church-festivals as of human appointment, prescribed a stricter observance of the Lord's day. But it was not till about 1595 that they began to place it very nearly on the footing of the Jewish sabbath, interdicting not only the slightest action of worldly business, but even every sort of pastime and recreation; a system which, once promulgated, soon gained ground as suiting their atrabilious humour,

[1] Lord Bacon, in his Advertisement respecting the Controversies of the Church of England, written under Elizabeth, speaks of this notion as newly broached. "Yea, and some indiscreet persons have been bold in open preaching to use dishonourable and derogatory speech and censure of the churches abroad; and that so far, as some of our men ordained in foreign parts have been pronounced to be no lawful ministers:" vol. i. p. 382. It is evident, by some passages in Strype, attentively considered, that natives regularly ordained abroad in the presbyterian churches were admitted to hold preferment in England; the first bishop who objected to them seems to have been Aylmer. Instances, however, of foreigners holding preferment without any reordination, may be found down to the civil wars. Annals of Reformation, ii, 522., and App. 116. Life of Grindal, 271. Collier, ii. 594. Neal, i. 258.

The divine right of episcopacy is said to have been laid down by Bancroft, in his famous sermon at Paul's Cross, in 1588. But I do not find any thing in it to that effect. It is however pretty distinctly asserted, if I mistake not the sense, in the canons of 1606. Overall's Convocation Book, 179, &c. Yet Laud had been reproved by the university of Oxford in 1604, for maintaining, in his exercise for bachelor of divinity, that there could be no true church without bishops, which was thought to cast a bone of contention between the church of England and the reformed upon the Continent. Heylin's Life of Laud, 54.

Cranmer and most of the original founders of the Anglican church, so far from maintaining the divine and indispensable right of episcopal government, held bishops and priests to be the same order.

[2] See the queen's injunctions of 1559, Somers Tracts, i. 65., and compare preamble of 5 and 6 of Ed. VI. c. 3.

and affording a new theme of censure on the vices of the great.[1] Those who opposed them on the high-church side, not only derided the extravagance of the Sabbatarians, as the others were called, but pretended that the commandment having been confined to the Hebrews, the modern observance of the first day of the week as a season of rest and devotion was an ecclesiastical institution, and in no degree more venerable than that of the other festivals or the season of Lent, which the puritans stubbornly despise.[2] Such a controversy might well have

[1] The first of these sabbatarians was a Dr. Bound, whose sermon was suppressed by Whitgift's order. But some years before, one of Martin Mar-prelate's charges against Aylmer was for playing at bowls on Sundays: and the word sabbath as applied to that day may be found occasionally under Elizabeth, though by no means so usual as afterwards. One of Bound's recommendations was that no feasts should be given on that day, "except by lords, knights, and persons of quality;" for which unlucky reservation his adversaries did not forget to deride him. Fuller's Church History, p. 227. This writer describes in his quaint style the abstinence from sports produced by this new doctrine; and remarks, what a slight acquaintance with human nature would have taught archbishop Laud, that "the more liberty people were offered, the less they used it; it was sport for them to refrain from sport." Collier, 643. Neal, 386. Strype's Whitgift, 530. May's Hist. of Parliament, 16.

[2] Heylin's Life of Laud, 15. Fuller, part ii. p. 76. The regulations enacted at various times since the Reformation for the observance of abstinence in as strict a manner, though not ostensibly on the same grounds, as it is enjoined in the church of Rome, may deserve some notice. A statute of 1548 (2 and 3 Edward VI. c. 19.), after reciting that one day or one kind of meat is not more holy, pure, or clean than another, and much else to the same effect, yet "forasmuch as divers of the king's subjects, turning their knowledge therein to gratify their sensuality, have of late more than in times past broken and contemned such abstinence, which hath been used in this realm upon the Fridays and Saturdays, the embering days and other days commonly called vigils, and in the time commonly called Lent, and other accustomed times; the king's majesty considering that due and godly abstinence is a mean to virtue and to subdue men's bodies to their soul and spirit, and considering also especially that fishers and men using the trade of fishing in the sea may thereby the rather be set on work, and that by eating of fish much flesh shall be saved and increased," enacts, after repealing all existing laws on the subject, that such as eat flesh at the forbidden seasons shall incur a penalty of ten shillings, or ten day's imprisonment *without flesh*, and a double penalty for the second offence.

The next statute relating to abstinence is one (5th Eliz. c. 5.) entirely for the increase of the fishery. It enacts § 15. &c, that no one, unless having a licence, shall eat flesh on fish-days, or on Wednesdays, now made an additional fish-day, under a penalty of 3*l.* or three months' imprisonment. Except that every one having three dishes of sea-fish at his table might have one of flesh also. But "because no manner of person shall misjudge of the intent of this statute," it is enacted that whosoever shall notify that any eating of fish or forbearing of flesh mentioned therein is of any necessity for the saving of the soul of man, or that it is the service of God, otherwise than as other politic laws are and be; that then such persons shall be punished as spreaders of false news, § 39. and 40. The act 27th Eliz. c. 11. repeals the prohibition as to Wednesday; and provides that no victuallers shall vend flesh in Lent, nor upon Fridays or Saturdays, under a penalty. The 35th Eliz. c. 7. § 22. reduces the penalty of three pounds or three months' imprisonment, enacted by 5th of Eliz. to one third. This is the latest statute that appears on the subject.

Many proclamations appear to have been issued in order to enforce an observance so little congenial to the propensities of Englishmen. One of those in the first year of Edward was before any statute; and its very words respecting the indifference of meats in a religious sense were adopted by the legislature the next year. (Strype's Eccles. Memor. ii. 81.) In one of Eliz.'s, A.D. 1572, as in the statute of Edward, the political motives of the prohibition seem in some measure associated with the superstition it disclaims; for eating in the season of Lent is called "licentious and carnal disorder, in contempt of God and man, and only to the satisfaction of devilish and carnal appetite;" and butchers, &c. "ministering to such foul lust of the flesh," were severely mulcted. Strype's Ann. ii. 208. But in 1576 another proclamation to the same effect uses no such hard words, and protests strongly against any superstitious interpretation of its motives. Life of Grindal, p. 226. So also in 1579, Strype's Anns. ii. 608., and, as far as I have observed, in all of a later date, the encouragement of the navy and fishery is set forth as their sole ground. In 1596, Whitgift, by the queen's command, issued letters to the bishops of his province, to take order that the fasting-days, Wed. and Fri. should be kept, and no suppers eaten, especially on Friday evens. This was on account of the great dearth of that and the preceding year. Strype's Whitgift, p. 490. These proclamations for the observance of Lent continued under James and Charles, as late, I presume, as the commencement of the civil war. They were diametrically opposed to the puritan tenets; for, notwithstanding the pretext about the fishery, there is no doubt that the dominant ecclesiastics maintained the observance of Lent as an ordinance of the church But I suspect that little regard

been left to the usual weapons. But James I., or some of the bishops to whom he listened, bethought themselves that this might serve as a test of puritan ministers. He published accordingly a declaration to be read in churches, permitting all lawful recreations on Sunday, after divine service, such as dancing, archery, May-games and morrice-dances, and other useful sports; but with a prohibition of bear-bating and other unlawful games. No recusant, or any one who had not attended the church-service, was entitled to this privilege; which might consequently be regarded as a bounty on devotion. The severe puritan saw it in no such point of view. To his cynical temper, May-games and morrice-dances were hardly tolerable on six days of the week: they were now recommended for the seventh. And this impious licence was to be promulgated in the church itself. It is indeed difficult to explain so unnecessary an insult on the precise clergy, but by supposing an intention to harass those who should refuse compliance. (Wilson, 709.) But this intention, from whatever cause, perhaps through the influence of archbishop Abbot, was not carried into effect, nor was the declaration itself enforced till the following reign.

The house of commons displayed their attachment to the puritan maxims, or their dislike of the prelatical clergy, by bringing in bills to enforce a greater strictness in this respect. A circumstance that occurred in the session of 1621 will serve to prove their fanatical violence. A bill having been brought in "for the better observance of the Sabbath, usually called Sunday," one Mr. Shepherd, sneering at the puritans, remarked that, as Saturday was dies Sabbati, this might be entitled a bill for the observance of Saturday, commonly called Sunday. This witticism brought on his head the wrath of that dangerous assembly. He was reprimanded on his knees, expelled the house, and when he saw what befell poor Floyd, might deem himself cheaply saved from their fangs with no worse chastisement.[1] Yet when the upper house sent down their bill with "the Lord's day" substituted for

was paid to Fri. and Sat. as days of weekly fast. Rymer, xvii. 131. 134. 349.; xviii. 268. 822. 961.

This abstemious system, however, was only compulsory on the poor. Licences were easily obtained by others from the privy council in Edward's days, and afterwards from the bishop. They were empowered, with their guests, to eat flesh on all fasting days for life. Sometimes the number of guests was limited. Thus the marquis of Winchester had permission for twelve friends; and John Sandford, draper, of Gloucester, for two. Strype's Mem. ii. 82. The act above mentioned for encouragement of the fishery, 5th Eliz. c. 5., provides that 1*l.* 6*s.* 8*d.* shall be paid for granting every licence, and 6*s.* 8*d.* annually afterwards, to the poor of the parish. But no licence was to be granted for eating beef at any time of the year, or veal from Michaelmas to the first of May. A melancholy privation to our countrymen! but, I have no doubt, little regarded. Drake and Morris did not lead men who had tasted beef but five days in the week. Strype makes known to us the interesting fact, that Ambrose Potter, of Gravesend, and his wife, had permission from archbishop Whitgift "to eat flesh and white meats in Lent, during their lives; so that it was done soberly and frugally, cautiously, and avoiding public scandal as much as might be, and giving 6*s.* 8*d.* annually to the poor of the parish." Life of Whitgift, 246.

The civil wars did not so put an end to the compulsory observance of Lent and fish-days, but that similar proclamations are found after the Restoration, I know not how long. Kennet's Reg., p. 367. 558. And some orthodox Anglicans continued to make a show of fasting. The following extracts from Pepys's diary are, perhaps, characteristic of the class. "I called for a dish of fish which we had for dinner, this being the first day of Lent; and I do intend to try whether I can keep it or no." Feb. 27. 1661. "Notwithstanding my resolution, yet for want of other victuals, I did eat flesh this Lent, but am resolved to eat as little as I can."

[1] Debates in Parl. 1621, vol. i. p. 45. 52. The king requested them not to pass this bill, being so directly against his proclamation. Id. 60. Shepherd's expulsion is mentioned in Mede's Letters, Harl. MSS. 389.

"the Sabbath," observing, "that people do not much incline to words of Judaism," the commons took no exception.[1] The use of the word Sabbath instead of Sunday became in that age a distinctive mark of the puritan party.

A far more permanent controversy sprung up about the end of the same reign, which afforded a new pretext for intolerance, and a fresh source of mutual hatred. Every one of my readers is acquainted more or less with the theological tenets of original sin, free will, and predestination, variously taught in the schools, and debated by polemical writers for so many centuries; and few can be ignorant that the articles of our own church, as they relate to these doctrines, have been very differently interpreted, and that a controversy about their meaning has long been carried on with a pertinacity which could not have continued on so limited a topic, had the combatants been merely influenced by the love of truth. Those who have no bias to warp their judgment will not perhaps have much hesitation in drawing their line between, though not at an equal distance between, the conflicting parties. It appears, on the one hand, that the articles are worded on some of these doctrines with considerable ambiguousness; whether we attribute this to the intrinsic obscurity of the subject, to the additional difficulties with which it had been entangled by theological systems, to discrepancy of opinion in the compilers, or to their solicitude to prevent disunion by adopting formularies which men of different sentiments might subscribe. It is also manifest that their framers came, as it were, with averted eyes to the Augustinian doctrine of predestination, and wisely reprehended those who turned their attention to a system so pregnant with objections, and so dangerous, when needlessly dwelt upon, to all practical piety and virtue. But, on the other hand, this very reluctance to inculcate the tenet is so expressed as to manifest their undoubting belief in it; nor is it possible either to assign a motive for inserting the seventeenth article, or to give any reasonable interpretation to it, upon the theory which at present passes for orthodox in the English church. And upon other subjects intimately related to the former, such as the penalty of original sin and the depravation of human nature, the articles, after making every allowance for want of precision, seem totally irreconcilable with the scheme usually denominated Arminian.

The force of those conclusions which we must, in my judgment, deduce from the language of these articles, will be materially increased by that appeal to contemporary and other early authorities, to which recourse has been had in order to invalidate them. Whatever doubts may be raised as to the Calvinism of Cranmer and Ridley, there can urely be no room for any as to the chiefs of the Anglican church

[1] Vol, ii. 97 Two acts were passed, 1 Car. I. c. 1. and 3 Car. I. c. 2., for the better observance of Sunday; the former of which gave great annoyance, it seems, to the orthodox party. "Had any such bill," says Heylin, "been offered in king James's time, it would have found a sorry welcome; but this king being under a necessity of compliance with them, resolved to grant them their desires in that particularly, to the end that they might grant his also in the aid required, when that obstruction was removed. The Sabbatarians took the benefit of this opportunity for the obtaining of this grant, the first that ever they obtained by all their strugglings, which of what consequence it was we shall see hereafter." Life of Laud, p. 129. Yet this statute permits the people lawful sports and pastimes on Sundays within their own parishes.

under Elizabeth. We find explicit proofs that Jewell, Nowell, Sandys, Cox, professed to concur with the reformers of Zurich and Geneva in every point of doctrine.[1] The works of Calvin and Bullinger became text-books in the English Universities. (Collier, 568.) Those who did not hold the predestinarian theory were branded with reproach by the names of free-willers and Pelagians. (Strype's Annals, i. 207. 294.) And when the opposite tenets came to be advanced, as they were at Cambridge about 1590, a clamour was raised as if some unusual heresy had been broached. Whitgift, with the concurrence of some other prelates, in order to withstand its progress, published what were called the Lambeth articles, containing the broadest and most repulsive declaration of all the Calvinistic tenets. But, lord Burleigh having shown some disapprobation, these articles never obtained any legal sanction. Strype's Whitgift, 434–472.

These more rigorous tenets, in fact, especially when so crudely enounced, were beginning to give way. They had been already abandoned by the Lutheran church. They had long been opposed in that of Rome by the Franciscan order, and latterly by the Jesuits. Above all, the study of the Greek fathers, with whom the first reformers had been little conversant, taught the divines of a more learned age, that men of as high a name as Augustin, and whom they were prone to overvalue, had entertained very different sentiments.[2] Still the novel opinions passed for heterodox, and were promulgated with much vacillation and indistinctness. When they were published in unequivocal propositions by Arminius and his school, James declared himself with vehemence against this heresy.[3] He not only sent English divines to sit in the synod of Dort, where the Calvinistic system was fully established, but instigated the proceedings against the remonstrants with more of theological pedantry than charity or decorum.[4] Yet this inconsistent monarch within a very few years was so wrought on by one or two favourite ecclesiastics, who inclined towards the doctrines condemned in that assembly, that openly to maintain the Augustinian system became almost a sure means of exclusion from preferment in our church. This was carried to its height under Charles. Laud, his sole counsellor in ecclesiastical matters, advised a declaration enjoining silence on the controverted points; a measure by no means un-

[1] Without loading the page with too many references on a subject so little connected with this work, I mention Strype's Ann. vol. i. p. 118., and a letter from Jewell to P. Martyr, in Burnet, vol. iii. App. 275.

[2] It is admitted on all hands that the Greek fathers did not inculcate the predestinarian system. Elizabeth having begun to read some of the fathers, bishop Cox writes of it with some disapprobation, adverting especially to the Pelagianism of Chrysostom and the other Greeks. Strype's Ann. i. 324.

[3] Winwood, iii. 293. The intemperate and even impertinent behaviour of James in pressing the states of Holland to inflict some censure or punishment on Vorstius is well known. But though Vorstius was an Arminian, it was not precisely on account of those opinions that he incurred the king's peculiar displeasure, but for certain propositions as to the nature of the Deity, which James called atheistical, but which were in fact Arian. The letters on this subject in Winwood are curious. Even at this time the king is said to have spoken moderately of predestination as a dubious point, p. 452., though he had treated Arminius as a mischievous innovator, for raising a question about it; and I rather doubt the accuracy of this passage in Winwood. Collier, p. 711., for the king's sentiments in 1616.

[4] Sir Dudley Carleton's Letters and Negotiations, passim. Brandt's History of Reformation in Low Countries, vol. iii. The English divines sent to this synod were decidedly Calvinist, but they spoke of themselves as deputed by the king, not by the church of England which they did not represent.

wise, if it had been fairly acted upon. It is alleged however that the preachers on one side only were silenced, the printers of books on one side censured in the star-chamber, while full scope was indulged to the opposite sect.[1]

The house of commons, especially in their last session, took up the increase of Arminianism as a public grievance. It was coupled in their remonstrances with popery, as a new danger to religion, hardly less terrible than the former. This bigoted clamour arose in part from the nature of their own Calvinistic tenets, which, being still prevalent in the kingdom, would, independently of all political motives, predominate in any popular assembly. But they had a sort of excuse for it in the close, though accidental and temporary connexion that subsisted between the partisans of these new speculative tenets and those of arbitrary power; the churchmen who receded most from Calvinism being generally the zealots of prerogative. They conceived also that these theories, conformable in the main to those most countenanced in the church of Rome, might pave the way for that restoration of her faith which from so many other quarters appeared to threaten them. Nor was this last apprehension so destitute of all plausibility as the advocates of the two first Stuarts have always pretended it to be.

James, well instructed in the theology of the reformers, and inured himself to the controversial dialectics, was far removed in point of opinion from any bias towards the Romish creed. But he had while in Scotland, given rise to some suspicions at the court of Elizabeth, by a little clandestine coquetry with the pope, which he fancied to be a politic means of disarming enmity.[2] Some knowledge of this, pro-

[1] There is some obscurity about the rapid transition of the court from Calvinism to the opposite side. It has been supposed that the part taken by James at the synod of Dort was chiefly political, with a view to support the house of Orange against the party headed by Barnevelt. But he was so much more of a theologian than a statesman, that I much doubt whether this will account satisfactorily for his zeal in behalf of the Gomarists. He wrote on the subject with much polemical bitterness, but without reference, so far as I have observed, to any political faction; though sir Dudley Carleton's letters show that *he* contemplated the matter as a minister ought to do. Heylin intimates that the king grew "more moderate afterwards, and into a better liking of those opinions which he had laboured to condemn at the synod of Dort." Life of Laud, 120. The court language, indeed, shifted so very soon after this, that Antonio de Dominis, the famous half-converted archbishop of Spalato, is said to have invented the name of doctrinal puritans for those who distinguished themselves by holding the Calvinistic tenets. Yet the synod of Dort was in 1618; while de Dominis left England not later than 1622. Buckingham seems to have gone very warmly into Laud's scheme of excluding the Calvinists. The latter gave him a list of divines on Charles's accession, distinguishing their names by O. and P. for orthodox and puritan; including several tenets in the latter denomination, besides those of the quinquarticular controversy; such as the indispensable observance of the Lord's day, the indiscrimination of bishops and presbyters, &c. Life of Laud, 119. The influence of Laud became so great, that to preach in favour of Calvinism, though commonly reputed to be the doctrine of the church, incurred punishment in any rank. Davenant bishop of Salisbury, one of the divines sent to Dort, and reckoned among the principal theologians of that age, was reprimanded on his knees before the privy council for this offence. Collier, p. 750. But in James's reign the university of Oxford was decidedly Calvinistic. A preacher, about 1623, having used some suspicious expressions, was compelled to recant them, and to maintain the following theses in the divinity school; Decretum prædestinationis non est conditionale—Gratia sufficiens ad salutem non conceditur omnibus. Wood, ii. 338. And I suppose it continued so in the next reign, so far as the university's opinions could be manifested. But Laud took care that no one should be promoted, as far as he could help it, who held these tenets.

[2] Winwood, vol. i. p. 1. 52. 388. Lettres d'Ossat, i. 221. Birch's Negotiations of Edmondes, p. 36. These references do not relate to the letter said to have been forged in the king's name, and addressed to Clement VIII. by lord Balmerino. But Laing, Hist. of Scotland, iii. 59., and Birch's Negotiations, &c., 177, render it almost certain that this letter was genuine

bably, as well as his avowed dislike of sanguinary persecution, and a foolish reliance on the trifling circumstance that one if not both of his parents had professed their religion, led the English catholics to expect a great deal of indulgence, if not support, at his hands. This hope might receive some encouragement from his speech on opening the parliament of 1604, wherein he intimated his design to revise and explain the penal laws, "which the judges might perhaps," he said, "in times past, have too rigorously interpreted." But the temper of those he addressed was very different. The catholics were disappointed by an act inflicting new penalties on recusants, and especially debarring them from educating their children according to their consciences.[1] The administration took a sudden turn towards severity; the prisons were filled, the penalties exacted, several suffered death, (Lingard, ix. 41. 55.,) and the general helplessness of their condition impelled a few persons, most of whom had belonged to what was called the Spanish party in the last reign, to the gunpowder conspiracy, unjustly imputed to the majority of catholics, though perhaps extending beyond those who appeared in it.[2] We cannot wonder that a parliament so nar-

which indeed has been generally believed by men of sense. James was a man of so little consistency or sincerity, that it is difficult to solve the problem of this clandestine intercourse. But it might very likely proceed from his dread of being excommunicated, and, in consequence, assassinated. In a proclamation, commanding all jesuits and priests to quit the realm, dated in 1603, he declares himself personally "so much beholden to the new bishop of Rome for his kind office and private temporal carriage towards us in many things, as we shall ever be ready to requite the same towards him as bishop of Rome in state and condition of a secular prince." Rymer, xvi. 573. This is explained by a passage in the memoirs of Sully (i. 15.). Clement VIII., though before Elizabeth's death he had abetted the project of placing Arabella on the throne, thought it expedient, after this design had failed, to pay some court to James, and had refused to accept the dedication of a work written against him, besides, probably, some other courtesies. There is a letter from the king addressed to the pope, and probably written in 1603, among the Cottonian MSS. Nero, B. vi. 9., which shows his disposition to coax and coquet with the Babylonian, against whom he so much inveighs in his printed works. It seems that Clement had so far presumed, as to suggest that the prince of Wales should be educated a catholic; which the king refuses, but not in so strong a manner as he should have done. I cannot recollect whether this letter has been printed, though I can scarcely suppose the contrary. Persons himself began to praise the works of James, and show much hope of what he would do. Cotton, Jul. B. vi. 77.

The severities against catholics seem at first to have been practically mitigated. Winwood, ii. 78. Archbishop Hutton wrote to Cecil, complaining of the toleration granted to papists, while the puritans were severely treated. Id. p. 40. Lodge, iii. 251. "The former," he says, "partly by this round dealing with the puritans, and partly by some extraordinary favour, have grown mightily in number, courage, and influence."—"If the gospel shall quail, and popery prevail, it will be imputed principally unto your great councillors, who either procure or yield to grant toleration to some." James told some gentlemen who petitioned for toleration, that the utmost they could expect was connivance. Carte, iii. 711. This seems to have been what he intended through his reign, till importuned by Spain and France to promise more.

[1] Jac. I. c. 4. The penalties of recusancy were particularly hard upon women, who, as I have observed in another place, adhered longer to the old religion than the other sex; and still more so upon those who had to pay for their scruples. It was proposed in parliament, but with the usual fate of humane suggestions, that husbands going to church, should not be liable for their wives' recusancy. Carte, 754. But they had the alternative afterwards, by 7. Jac. I c. 6., of letting their wives lie in prison or paying 10*l.* a month.

[2] From comparing some passages in sir Ch. Cornwallis's despatches, Winwood, vol. ii. p. 143. 144. 153., with others in Birch's account of sir Tho. Edmondes's negotiations, p. 233. et. seq., it appears that the English catholics were looking forward at this time to some crisis in their favour, and that even the court of Spain was influenced by their hopes. A letter from sir Tho. Parry to Edmondes, dated at Paris, 10 Oct. 1605, is remarkable: "Our priests are very busy about petitions to be exhibited to the king's majesty at this parliament, and some further designs upon refusal. These matters are secretly managed by intelligence with their colleagues in those parts where you reside, and with the two nuncios. I think it were necessary for his majesty's service that you found means to have privy spies amongst them, to dis-

rowly rescued from personal destruction endeavoured to draw the cord still tighter round these dangerous enemies. The statute passed on this occasion is by no means more harsh than might be expected. It required not only attendance on worship, but participation in the communion, as a test of conformity, and gave an option to the king of taking a penalty of 20*l.* a month from recusants, or two thirds of their lands. It prescribed also an oath of allegiance, the refusal of which incurred the penalties of a præmunire. This imported that notwithstanding any sentence of deprivation or excommunication by the pope, the taker would bear true allegiance to the king and defend him against any conspiracies which should be made by reason of such sentence or otherwise, and do his best endeavour to disclose them; that he from his heart abhorred, detested, and abjured as impious and heretical, the damnable doctrine and position that princes, excommunicated or deprived by the pope, may be deposed or murdered by their subjects, or any other whatsoever; and that he did not believe that the pope or any other could absolve him from his oath. (3. Jac. I. c. 4, 5.)

Except by cavilling at one or two words, it seemed impossible for the Roman catholics to decline so reasonable a test of loyalty, without justifying the worst suspicions of protestant jealousy. Most of the secular priests in England, asking only a connivance in the exercise of their ministry, and aware how much the good work of reclaiming their

cover their negotiations. Something is at present in hand amongst these desperate hypocrites, which I trust God shall divert by the vigilant care of his majesty's faithful servants and friends abroad, and prudence of his councik at home." Birch, p. 233. There seems indeed some ground for suspicion, that the nuncio at Brussels was privy to the conspiracy; though this ought not to be asserted as an historical fact. Whether the offence of Garnet went beyond misprision of treason has been much controverted. The catholic writers maintain that he had no knowledge of the conspiracy except by having heard it in confession. But this rests altogether on his word; and the prevarication of which he has been proved to be guilty, not to mention the damning circumstance that he was taken at Hendlip in concealment along with the other conspirators, makes it difficult for a candid man to acquit him of a thorough participation in their guilt. Compare Townsend's Accusations of History against the Church of Rome (1825), p. 247., containing extracts from some important documents in the State Paper Office, not as yet published, with State Trials, vol. ii.; and see Lingard, ix. 160, &c. Yet it should be kept in mind, that it was easy for a few artful persons to keep on the alert by indistinct communications a credulous multitude whose daily food was rumour; and the general hopes of the English Romanists at the moment are not evidence of their privity to the gunpowder treason, which was probably contrived late, and imparted to very few. But to deny that there was such a plot, or, which is the same thing, to throw the whole on the contrivance and management of Cecil, as has sometimes been done, argues great effrontery in those who lead, and great stupidity in those who follow. The letter to lord Monteagle, the discovery of the powder, the simultaneous rising in arms in Warwickshire, are as indisputable as any facts in history. What then had Cecil to do with the plot, except that he hit upon the clue to the dark allusions in the letter to Monteagle, of which he was courtier enough to let the king take the credit? James's admirers have always reckoned this, as he did himself, a vast proof of sagacity; yet there seems no great acuteness in the discovery, even if it had been his own. He might have recollected the circumstances of his father's catastrophe, which would naturally put him on the scent of gunpowder. In point of fact, however, the happy conjecture appears to be Cecil's. Winwood, ii. 170. But had he no previous hint? See Lodge, iii. 301.

The earl of Northumberland was not only committed to the Tower on suspicion of privity in the plot, but lay fourteen years there, and paid a fine of 11,003*l.* (by composition for 30,000*l.*) before he was released. Lingard, ix. 89. It appears almost incredible that a man of his ability, though certainly of a dangerous and discontented spirit, and rather destitute of religion than a zealot for popery, which he did not, I believe, openly profess, should have mingled in so flagitious a design. There is indeed a remarkable letter in Winwood, vol. iii. p. 287., which tends to corroborate the suspicions entertained of him. But this letter is from Salisbury, his inveterate enemy. Every one must agree, that the fine imposed on this nobleman was preposterous. Were we even to admit that suspicion might justify his long imprisonment, a participation in one of the most atrocious conspiracies recorded in history was, if proved, to be more severely punished: if unproved, not at all.

apostate countrymen was retarded by the political obloquy they incurred, would have willingly acquiesced in the oath. But the court of Rome, not yet receding an inch from her proudest claims, absolutely forbade all catholics to abjure her deposing power by this test, and employed Bellarmine to prove its unlawfulness. The king stooped to a literary controversy with this redoubted champion, and was prouder of no exploit of his life than his answer to the cardinal's book; by which he incurred the contempt of foreign courts and of all judicious men.[1] Though neither the murderous conspiracy of 1605, nor this refusal to abjure the principles on which it was founded, could dispose James to persecution, or even render the papist so obnoxious in his eyes as the puritan, yet he was long averse to any thing like a general remission of the penal laws. In sixteen instances after this time the sanguinary enactments of his predecessor were enforced, but only perhaps against priests who refused the oath;[2] the catholics enjoyed on the whole somewhat more indulgence than before, in respect to the private exercise of their religion; at least enough to offend narrow-spirited zealots, and furnish pretext for the murmurs of a discontented parliament, but under condition of paying compositions for recusancy; a regular annual source of revenue which, though apparently trifling in amount, the king was not likely to abandon, even if his notions of prerogative, and the generally received prejudices of that age, had not determined him against an express toleration.[3]

In the course, however, of that impolitic negotiation, which exposed him to all eyes as the dupe and tool of the court of Madrid, James was led on to promise concessions for which his protestant subjects were ill prepared. That court had wrought on his feeble mind by affected coyness about the infanta's marriage, with two private aims: to secure his neutrality in the war of the Palatinate, and to obtain better terms for the English catholics. Fully successful in both ends, it would probably have at length permitted the union to take place, had not Buckingham's rash insolence broken off the treaty; but I am at a loss

[1] Carte, iii. 782. Collier, 690. Butler's Mem. of Catholics. Lingard, vol. ix. 97. Aikin, i. 319. It is observed by Collier, ii. 695., and indeed by the king himself, in his Apology for the Oath of Allegiance, edit. 1619, p. 46., that Bellarmine plainly confounds the oath of allegiance with that of supremacy. But this cannot be the whole of the case; it is notorious that Bellarmine protested against any denial of the pope's deposing power.

[2] Lingard, ix. 215. Drury, executed in 1607, was one of the twelve priests who, in 1602, had signed a declaration of the queen's right to the crown, notwithstanding her excommunication. But, though he evidently wavered, he could not be induced to say as much now in order to save his life. State Trials, ii. 358.

[3] Lord Bacon, wise in all things, always recommended mildness towards recusants. In a letter to Villiers in 1616, he advises that the oath of supremacy should by no means be tendered to recusant magistrates in Ireland; "the new plantation of protestants," he says, "must mate the other party in time." Vol. ii. p. 530. This has not indeed proved true; yet as much, perhaps, for want of following Bacon's advice, as for any other cause. He wished for a like toleration in England. But the king, as Buckingham lets him know, was "of a quite contrary opinion; for though he would not by any means have a more severe course held than his laws appoint in that case, yet there are many reasons why there should be no mitigation above that which his laws have exerted, and his own conscience telleth him to be fit." He afterwards professes "to account it a baseness in a prince to show such a desire of the match [this was in 1617] as to slack any thing in his course of government, much more in propagation of the religion he professeth, for fear of giving hindrance to the match thereby." Page 562. What a contrast to the behaviour of this same king six years afterwards! The commons were always dissatisfied with lenity, and complained that the lands of recusants were undervalued; as they must have been, if the king got only 6000*l.* per annum by the compositions. Debates in 1621, vol. i. p. 24. 91. But he valued those in England and Ireland at 36,000*l.* Lingard, 215., from Hardwicke Papers.

to perceive the sincere and even generous conduct which some have found in the Spanish council during this negotiation.[1] The king acted with such culpable weakness, as even in him excites our astonishment. Buckingham, in his first eagerness for the marriage on arriving in Spain, wrote to ask if the king would acknowledge the pope's spiritual supremacy, as the surest means of success. James professed to be shocked at this, but offered to recognise his jurisdiction as patriarch of the west, to whom ecclesiastical appeals might ultimately be made; a concession as incompatible with the code of our protestant laws as the former. Yet with this knowledge of his favourite's disposition, he gave the prince and him a written promise to perform whatever they should agree upon with the court of Madrid.[2] On the treaty being almost concluded, the king, prince, and privy-council swore to observe certain stipulated articles, by which the infanta was not only to have the exercise of her religion, but the education of her children till ten years of age. But the king was also sworn to private articles; that no penal laws should be put in force against the catholics, that there should be a perpetual toleration of their religion in private houses, that he and his son would use their authority to make parliament confirm and ratify these articles, and revoke all laws (as it is with strange latitude expressed) containing any thing repugnant to the Roman catholic religion, and that they would not consent to any new laws against them. The prince of Wales separately engaged to procure the suspension or abrogation of the penal laws within three years, and to lengthen the term for the mother's education of their children from ten years to

[1] The absurd and highly blamable conduct of Buckingham has created a prejudice in favour of the court of Madrid. That they desired the marriage is easy to be believed; but that they would have ever sincerely co-operated for the restoration of the Palatinate, or even withdrawn the Spanish troops from it, is neither rendered probable by the general policy of that government, nor by the conduct it pursued in the negotiation. Compare Hardwicke State Papers, vol. i. Cabala, 1. et post. Howell's Letters. Clarendon State Papers, vol. i. ad initium, especially p. 13.

A very curious paper in the latter collection, p. 14., may be thought, perhaps, to throw light on Buckingham's projects, and account in some measure for his sudden enmity to Spain. During his residence at Madrid in 1623, a secretary who had been dissatisfied with the court revealed to him a pretended secret discovery of gold mines in a part of America, and suggested that they might be easily possessed by any association that could command seven or eight hundred men; and that after having made such a settlement, it would be easy to take the Spanish flotilla, and attempt the conquest of Jamaica and St. Domingo. This made so great an impression on the mind of Buckingham, that, long afterwards, in 1628, he entered into a contract with Gustavus Adolphus, who bound himself to defend him against all opposers in the possession of these mines, as an absolute prince and sovereign, on condition of receiving one tenth of the profits; promising especially his aid against any puritans who might attack him from Barbadoes or elsewhere, and to furnish him with four thousand men and six ships of war, to be paid out of the revenue of the mines.

This is a very strange document, if genuine. It seems to show that Buckingham, aware of his unpopularity in England, and that sooner or later he must fall, and led away, as so many were, by the expectation of immense wealth in America, had contrived this arrangement, which was probably intended to take place only in the event of his banishment from England. The share that Gustavus appears to have taken in so wild a plan is rather extraordinary, and may expose the whole to some suspicion. It is not clear how this came among the Clarendon papers; but the indorsement runs:—"Presented, and the design attempted and in some measure attained by Cromwell, anno 1652." I should conjecture therefore that some spy of the king's procured the copy from Cromwell's papers.

[2] Hardwicke Papers, p. 402. 411. 417. The very curious letters in this collection relative to the Spanish match are the vouchers for my text. It appears by one of secretary Conway's since published, Ellis, iii. 154., that the king was in great distress at the engagement for a complete immunity from penal laws for the catholics, entered into by the prince and Buckingham; but, on full deliberation in the council, it was agreed that he must adhere to his promise. This rash promise was the cause of his subsequent prevarications.

twelve, if it should be in his own power. He promised also to listen to catholic divines, whenever the infanta should desire it. (Hardwicke Papers. Rushworth.)

These secret assurances, when they were whispered in England, might not unreasonably excite suspicion of the prince's wavering in his religion, which he contrived to aggravate by an act as imprudent as it was reprehensible. During his stay at Madrid, while his inclinations were still bent on concluding the marriage, the sole apparent obstacle being the pope's delay in forwarding the dispensation, he wrote a letter to Gregory XV., in reply to one received from him, in language evidently intended to give an impression of his favourable dispositions towards the Roman faith. The whole tenor of his subsequent life must have satisfied every reasonable inquirer into our history of Charles's real attachment to the Anglican church; nor could he have had any other aim than to facilitate his arrangements with the court of Rome by this deception. It would perhaps be uncandid to judge severely a want of ingenuousness, which youth, love, and bad counsels may extenuate; yet I cannot help remarking that the letter is written with the precautions of a veteran in dissimulation; and, while it is full of what might raise expectation, contains no special pledge that he could be called on to redeem. But it was rather presumptuous to hope that he could foil the subtlest masters of artifice with their own weapons.

James, impatient for this ill-omened alliance, lost no time in fulfilling his private stipulations with Spain. He published a general pardon of all penalties already incurred for recusancy. It was designed to follow this up by a proclamation prohibiting the bishops, judges, and other magistrates to execute any penal statute against the catholics. But the lord-keeper, bishop Williams, hesitated at so unpopular a stretch of power. (Rushworth. Cabala, p. 19.) And the rupture with Spain ensuing almost immediately, the king, with a singular defiance of all honest men's opinions, though the secret articles of the late treaty had become generally known, declared in his first speech to parliament in 1624, that "he had only thought good sometimes to wink and connive at the execution of some penal laws, and not to go on so rigorously as at other times, but not to dispense with any or to forbid or alter any that concern religion: he never permitted or yielded, he never did think it with his heart, nor spoke it with his mouth."[2]

[1] Hardwicke Papers, p. 452., where the letter is printed in Latin. The translation in Wilson Rushworth, and Cabala, p. 214., is not by any means exact, going in several places much beyond the original. If Hume knew nothing but the translation, as is most probable, we may well be astonished at his way of dismissing this business; that "the prince having received a very civil letter from the pope, he was induced to return a very civil answer." Clarendon saw it in a different light. Clar. State Papers, ii. 337.

Urban VIII. had succeeded Gregory XV. before the arrival of Charles's letter. He answered it of course in a style of approbation, and so as to give the utmost meaning to the prince's compliments, expressing his satisfaction, "cum pontificem Romanum ex officii genere colere princeps Britannus inciperet," &c. Rushworth, vol. i. p. 98.

It is said by Howell, who was then on the spot, that the prince never used the service of the church of England while he was at Madrid, though two chaplains, church-plate, &c. had been sent over. Howell's Letters, p. 140. Bristol and Buckingham charged each other with advising Charles to embrace the Romish religion; and he himself in a letter to Bristol, Jan. 21. 1625-6, imputes this to him in the most positive terms. Cabala, p. 17. 4to. edit. As to Buckingham's willingness to see this step taken, there can, I presume, be little doubt.

[2] Parl. Hist. 1375. Both houses, however, joined in an address that the laws against

When James soon after this, not yet taught by experience to avoid a catholic alliance, demanded the hand of Henrietta Maria for his son, Richelieu thought himself bound by policy and honour as well as religion to obtain the same or greater advantages for the English catholics than had been promised in the former negotiation. Henrietta was to have the education of her children till they reached the age of twelve; thus were added two years, at a time of life when the mind becomes susceptible of lasting impressions, to the term at which, by the treaty with Spain, the mother's superintendence was to cease. (Rushworth.) Yet there is the strongest reason to believe, that this condition was merely inserted for the honour of the French crown, with a secret understanding that it should never be executed.[1] In fact, the royal children were placed at a very early age under protestant governors of the king's appointment; nor does Henrietta appear to have ever insisted on her right. That James and Charles should have incurred the scandal of this engagement, since the articles, though called private, must be expected to transpire, without any real intention of performing it, is an additional instance of that arrogant contempt of public opinion which distinguished the Stuart family. It was stipulated in the same private articles, that prisoners on the score of religion should be set at liberty, and that none should be molested in future.[2] These promises were irregularly fulfilled, according to the

recusants might be put in execution, Id. 1408.; and the commons returned again to the charge afterwards. Idem. 1484.

[1] See a series of letters from lord Kensington, (better known afterwards as earl of Holland), the king's ambassador at Paris for this marriage-treaty; in the appendix to Clarendon State Papers, vol. ii. p. v. viii. ix.

[2] Hardwicke Papers, i. 536. Birch, in one of those volumes given by him to the British Museum, and which ought to be published according to his own intention, has made several extracts from the MS. despatches of Tillieres, the French ambassador, which illustrate this negotiation. The pope, it seems, stood off from granting the dispensation, requiring that the English catholic clergy should represent to him their approbation of the marriage. He was informed that the cardinal had obtained terms much more favourable for the catholics than in the Spanish treaty. In short, they evidently fancied themselves to have gained a full assurance of toleration; nor could the match have been effected on any other terms. The French minister writes to Louis XIII. from London, Oct. 6. 1624. that he had obtained a supersedeas of all prosecutions, more than themselves expected, or could have believed possible; "en somme, un acte très publique, et qui fut résolu en plein conseil, le dit roi l'ayant assemblé exprès pour cela le jour d'hier." The pope agreed to appoint a bishop for England, nominated by the king of France. Oct. 22. The oath of allegiance, however, was a stumbling-block; the king could not change it by his own authority, and establish another in parliament, "où la faction des puritains prédomine, de sorte qu'ils peuvent ce qu'ils veulent." Buckingham however promised "de nous faire obtenir l'assurance que votre majesté désire tant, que les catholiques de ce pais ne seront jamais inquiétés pour le raison du serment de fidélité, du quel votre majeste a si souvent ouï parler." Dec. 22. He speaks the same day of an audience he had of king James, who promised never to persecute his catholic subjects, nor desire of them any oath which spoke of the pope's spiritual authority, "mais seulement un acte de la reconnoissance de la domination temporelle qui Dieu lui a donnée, et qu'ils auroient en considération de votre majesté, et de la confiance, que vous prenez en sa parole, beaucoup plus de liberté qu'ils n'auroient eu en vertu des articles du traité d'Espagne." The French advised that no parliament should be called till Henrietta should come over, "de qui la présence serviroit de bride aux puritains." It is not wonderful, with all this good-will on the part of their court, that the English catholics should now send a letter to request the granting of the dispensation. A few days after, Dec. 26. the ambassador announces the king's letter to the archbishops, directing them to stop the prosecution of catholics, the enlargement of prisoners on the score of religion, and the written promises of the king and prince to let the catholics enjoy more liberty than they would have had by virtue of the treaty with Spain. On the credit of this, Louis wrote on the 23rd of Jan. to request six or eight ships of war to employ against Soubise, the chief of the Hugonots; with which, as is well known, Charles complied in the ensuing summer.

The king's letter above mentioned does not, I believe, appear. But his ambassadors, Carlisle and Holland, had promised in his name that he would give a written promise, on the word

terms on which Charles stood with his brother-in-law. Sometimes general orders were issued to suspend all penal laws against papists; again, by capricious change of policy, all officers and judges are directed to proceed in their execution; and this severity gave place in its turn to a renewed season of indulgence. If these alterations were not very satisfactory to the catholics, the whole scheme of lenity displeased and alarmed the protestants. Tolerance, in any extensive sense, of that proscribed worship was equally abhorrent to the prelatist and the puritan; though one would have winked at its peaceable and domestic exercise, which the other was zealous to eradicate. But had they been capable of more liberal reasoning upon this subject, there was enough to justify their indignation at this attempt to sweep away the restrictive code established by so many statutes, and so long deemed essential to the security of their church, by an unconstitutional exertion of the prerogative, prompted by no more worthy motive than compliance with a foreign power, and tending to confirm suspicions of the king's wavering between the two religions, or his indifference to either. In the very first months of his reign, and while that parliament was sitting which has been reproached for its parsimony, he sent a fleet to assist the French king in blocking up the port of Rochelle; and with utter disregard of the national honour, ordered the admiral, who reported that the sailors would not fight against protestants, to sail to Dieppe, and give up his ships into the possession of France.[1] His subsequent alliance with the Hugonot party in consequence merely of Buckingham's unwarrantable hostility to France, founded on the most extraordinary motives, could not redeem, in the eyes of the nation, this instance of lukewarmness, to say the least, in the general cause of the Reformation. Later ages have had means of estimating the attachment of Charles the First to protestantism, which his contemporaries in that early period of his reign did not enjoy; and this has led some to treat the apprehensions of parliament as either insincere or preposterously unjust. But can this be fairly pretended by any

and honour of a king, which the prince and a secretary of state should also sign, that all his Roman catholic subjects should enjoy more freedom as to their religion than they could have had by any articles agreed on with Spain: not being molested in their persons or property for their profession and exercise of their religion, provided they used their liberty with moderation, and rendered due submission to the king, who would not force them to any oath contrary to their religion. This was signed 18th Nov. Hardwicke Papers, 546.

Yet after this concession on the king's part, the French cabinet was encouraged by it to ask for "a direct and public toleration, not by connivance, promise, or écrit secret, but by a public notification to all the Roman catholics, and that of all his majesty's kingdoms whatsoever, confirmed by his majesty's and the prince's oath, and attested by a public act, whereof a copy to be delivered to the pope or his minister, and the same to bind his majesty and the prince's successors for ever." Id. p. 552. The ambassadors expressed the strongest indignation at this proposal, on which the French did not think fit to insist. In all this wretched negotiation, James was as much the dupe as he had been in the former, expecting that France would assist in the recovery of the Palatinate, towards which, in spite of the promises, she took no steps. Richelieu had said, "Donnez-nous des prêtres, et nous vous donnerons des colonels." Id p. 538. Charles could hardly be expected to keep his engagement as to the catholics, when he found himself so grossly outwitted.

It was during this marriage-treaty of 1624, that the archbishop of Embrun, as he relates himself, in the course of several conferences with the king on that subject, was assured by him that he was desirous of re-entering the fold of the church. Wilson in Kennet, p. 786. note by Wellwood. I have not seen the original passage; but Dr. Lingard puts by no means so strong an interpretation on the king's words, as related by the archbishop. volume ix. 323.

[1] Kennet, p. vi. Rushworth. Lingard, ix. 353. Cabala, p. 144.

one who has acquainted himself with the course of proceedings on the Spanish marriage, the whole of which was revealed by the earl of Bristol to the house of lords? Was there nothing, again, to excite alarm in the frequent conversions of high rank to popery, in the more dangerous partialites of many more, in the evident bias of certain distinguished churchmen to tenets rejected at the Reformation? The course pursued with respect to religious matters after the dissolution of parliament in 1629, to which I shall presently advert, did by no means show the misgivings of that assembly to have been ill-founded.

It was neither, however, the Arminian opinions of the higher clergy, nor even their supposed leaning towards those of Rome, that chiefly rendered them obnoxious to the commons. They had studiously inculcated that resistance to the commands of rulers was in every conceivable instance a heinous sin; a tenet so evidently subversive of all civil liberty that it can be little worth while to argue about right and privilege, wherever it has obtained a real hold on the understanding and conscience of a nation. This had very early been adopted by the Anglican reformers, as a barrier against the disaffection of those who adhered to the ancient religion, and in order to exhibit their own loyalty in a more favourable light. The homily against wilful disobedience and rebellion was written on occasion of the rising of the northern earls in 1569, and is full of temporary and even personal allusions.[1] But the same doctrine is enforced in others of those compositions, which enjoy a kind of half authority in the English church. It is laid down in the canons of convocation in 1606. It is very frequent in the writings of English divines, those especially who were much about the court. And an unlucky preacher at Oxford, named Knight, about 1622, having thrown out some intimation that subjects oppressed by their prince on account of religion might defend themselves by arms; that university, on the king's highly resenting such heresy, not only censured the preacher, (who had the audacity to observe that the king by then sending aid to the French Hugonots of Rochelle, as was rumoured to be designed, had sanctioned his position,) but pronounced a solemn decree, that it is in no case lawful for subjects to make use of force against their princes, nor to appear offensively or defensively in the field against them. All persons promoted to degrees

[1] "God alloweth (it is said in this homily, among other passages to the same effect) neither the dignity of any person, nor the multitude of any people, nor the weight of any cause, as sufficient for the which the subjects may move rebellion against their princes." The next sentence contains a bold position. "Turn over and read the histories of all nations, look over the chronicles of our own country, call to mind so many rebellions of old time, and some yet fresh in memory; ye shall not find that God ever prospered any rebellion against their natural and lawful prince, but contrariwise, that the rebels were overthrown and slain, and such as were taken prisoners dreadfully executed." They illustrate their doctrine by the most preposterous example I have ever seen alleged in any book, that of the Virgin Mary; who, "being of the royal blood of the ancient natural kings of Jewry, obeyed the proclamation of Augustus to go to Bethlehem. This obedience of this most noble and most virtuous lady to a foreign and pagan prince doth well teach us, who in comparison of her are both base and vile, what ready obedience we do owe to our natural and gracious sovereign."

In another homily entitled "On Obedience," the duty of non-resistance, even in defence of religion, is most decidedly maintained; and in such a manner as might have been inconvenient in case of a popish successor. Nor was this theory very consistent with the aid and countenance given to the United Provinces. Our learned churchmen, however, cared very little for the Dutch. They were more puzzled about the Maccabees. But that knot is cut in bishop Overall's Convocation Book, by denying that Antiochus Epiphanes had lawful possession of Palestine; a proposition not easy to be made out.

were to subscribe this article, and to take an oath that they not only at present detested the opposite opinion, but would at no future time entertain it. A ludicrous display of the folly and despotic spirit of learned academics![1]

Those however who most strenuously denied the abstract right of resistance to lawful commands were by no means obliged to maintain the duty of yielding them an active obedience. In the case of religion, it was necessary to admit that God was rather to be obeyed than man. Nor had it been pretended, except by the most servile churchmen, that subjects had no positive rights, in behalf of which they might decline compliance with illegal requisitions. This however was openly asserted in the reign of Charles. Those who refused the general loan of 1626, had to encounter assaults from very different quarters, and were not only imprisoned, but preached at. Two sermons by Sibthorp and Mainwaring excited particular attention. These men, eager for preferment which they knew the readiest method to obtain, taught that the king might take the subject's money at his pleasure, and that no one might refuse his demand, on penalty of damnation. "Parliaments," says Mainwaring, "were not ordained to contribute any right to the king, but for the more equal imposing and more easy exacting of that which unto kings doth appertain by natural and original law and justice, as their proper inheritance annexed to their imperial crowns from their birth."[2] These extravagancies of rather obscure men would have passed with less notice, if the government had not given them the most indecent encouragement. Abbot, archbishop of Canterbury, a man of integrity, but upon that account, as well as for his Calvinistic partialities, long since obnoxious to the courtiers, refused to license Sibthorp's sermon, alleging some unwarrantable passages which it contained. For no other cause than this, he was sequestered from the exercise of his archiepiscopal jurisdiction, and confined to a country-house in Kent.[3] The house of commons, after many complaints of those ecclesiastics,

[1] Collier, 724. Neal, 495. Wood's Hist. of the Univ. of Oxford, ii. 341. Knight was sent to the Gatehouse prison, where he remained two years. Laud was the chief cause of this severity, if we may believe Wood; and his own diary seems to confirm this.

[2] Parl. Hist. 877. 395. 410, &c. Kennet, p. 30. Collier, 740. 743. This historian, though a non-juror, is Englishman enough to blame the doctrines of Sibthorp and Mainwaring, and, consistently with his high-church principles, is displeased at the suspension of Abbot by the king's authority.

[3] State Trials. ii. 1449. A few years before this, Abbot had the misfortune, while hunting deer in a nobleman's park, to shoot one of the keepers with his crossbow. Williams and Laud, who then acted together, with some other of the servile crew, had the baseness to affect scruples at the archbishop's continuance in his function, on pretence that, by some contemptible old canon, he had become irregular in consequence of this accidental homicide; and Spelman disgraced himself by writing a treatise in support of this doctrine. James, however, had more sense than the antiquary, and less ill-nature than the churchmen; and the civilians gave no countenance to Williams's hypocritical scruples. Hacket's Life of Williams, p. 651. Biog. Britann. art. Abbot. Spelman's Works, part 2. p. 3. Aikin's James I., ii. 259. Williams's real object was to succeed the archbishop on his degradation.

It may be remarked that Abbot, though a very worthy man, had not always been untainted by the air of a court. He had not scrupled grossly to flatter the king (see his article in Biog. Brit. and Aikin, i. 368); and tells us himself, that he introduced Villiers, in order to supplant Somerset; which, though well-meant, did not perhaps become his function. Even in the delicate business of promising toleration to the catholics by the secret articles of the treaty with Spain, he gave satisfaction to the king (Hardwicke Papers, i. 428.), which could only be by compliance. This shows that the letter in Rushworth, ascribed to the archbishop, deprecating all such concessions, is not genuine. In Cabala, p. 13. it is printed with the name of the archbishop of York, Mathews.

finally proceeded against Mainwaring by impeachment at the bar of the lords. He was condemned to pay a fine of 1000*l.*, to be suspended for three years from his ministry, and to be incapable of holding any ecclesiastical dignity. Yet the king almost immediately pardoned Mainwaring, who became in a few years a bishop, as Sibthorp was promoted to an inferior dignity.[1]

There seems on the whole to be very little ground for censure in the proceedings of this illustrious parliament. I admit that if we believe Charles the First to have been a gentle and beneficent monarch, incapable of harbouring any design against the liberties of his people, or those who stood forward in defence of their privileges, wise in the choice of his counsellors, and patient in listening to them, the commons may seem to have carried their opposition to an unreasonable length. But if he had shown himself possessed with such notions of his own prerogative, no matter how derived, as could bear no effective control from fixed law or from the nation's representatives; if he was hasty and violent in temper, yet stooping to low arts of equivocation and insincerity, whatever might be his estimable qualities in other respects, they could act, in the main, no otherwise than by endeavouring to keep him in the power of parliament, lest his power should make parliament but a name. Every popular assembly, truly zealous in a great cause, will display more heat and passion than cool-blooded men after the lapse of centuries may wholly approve.[2] But so far were they from encroaching, as our Tory writers pretend, on the just powers of a limited monarch, that they do not appear to have conceived, they at least never hinted at, the securities without which all they had obtained or attempted would become ineffectual. No one member of that house, in the utmost warmth of debate, is recorded to have suggested the abolition of the court of star-chamber, or any provision for the periodical meeting of parliament. Though such remedies for the greatest abuses were in reality consonant to the actual unrepealed law of the land, yet as they implied, in the apprehension of the generality, a retrenchment of the king's prerogative, they had not yet become familiar to their hopes. In asserting the illegality of arbitrary detention, of compulsory loans, of tonnage and poundage levied without consent of parliament, they stood in defence of positive rights won by their fathers, the prescriptive inheritance of Englishmen. Twelve years more of repeated aggressions taught the long parliament what a few

[1] The bishops were many of them gross sycophants of Buckingham. Besides Laud, Williams, and Neile, one Field, bishop of Llandaff, was an abject courtier. See a letter of his in Cabala, p. 118. 4to. edit. Mede says, (27th May, 1626,) "I am sorry to hear they (the bishops) are so habituated to flattery, that they seem not to know of any other duty that belongs to them." Ellis's Letters, iii. 228. for the account Mede gives of the manner in which the heads of houses forced the election of Buckingham as chancellor of Cambridge, while the impeachment was pending against him. The junior masters of arts, however, made a good stand: so that it was carried against the earl of Berkshire only by three voices.

[2] Those who may be inclined to dissent from my text, will perhaps bow to their favourite Clarendon. He says that in the first three parliaments, though there were "several distempered speeches of particular persons, not fit for the reverence due to his majesty," yet he "does not know any formed act of either house (for neither the remonstrance nor votes of the last day were such), that was not agreeable to the wisdom and justice of great courts upon those extraordinary occasions; and whoever considers the acts of power and injustice in the intervals of parliament, will not be much scandalized at the warmth and vivacity of those meetings." Vol. i. p. 8. ed. 1826.

sagacious men might perhaps have already suspected, that they must recover more of their ancient constitution from oblivion, that they must sustain its partial weakness by new securities, that, in order to render the existence of monarchy compatible with that of freedom, they must not only strip it of all it had usurped, but of something that was its own.

CHAPTER VIII.

FROM THE DISSOLUTION OF CHARLES'S THIRD PARLIAMENT TO THE MEETING OF THE LONG PARLIAMENT.

Declaration of the King after the Dissolution—Prosecutions of Eliot and others for Conduct in Parliament—Of Chambers for refusing to pay Customs—Commendable Behaviour of Judges in some Instances—Means adopted to raise the Revenue—Compositions for Knighthood—Forest Laws—Monopolies—Ship Money—Extension of it to inland Places—Hampden's Refusal to pay—Arguments on the Case—Proclamations — Various arbitrary Proceedings — Star-chamber Jurisdiction—Punishments inflicted by it—Cases of Bishop Williams, Prynne, etc.—Laud, his Character—Lord Strafford—Correspondence between these two—Conduct of Laud in the Church-Prosecution of Puritans—Favour shown to Catholics—Tendency to their Religion—Expectations entertained by them—Mission of Panzani—Intrigue of Bishop Montagu with him—Chillingworth—Hales—Character of Clarendon's Writings—Animadversions on his Account of this Period—Scots' Troubles, and Distress of the Government—The Parliament of April, 1640—*Council of York—Convocation of the Long Parliament.* pp. 297–359.

THE dissolution of a parliament was always to the prerogative, what the dispersion of clouds is to the sun. As if in mockery of the transient obstruction, it shone forth as splendid and scorching as before. Even after the exertions of the most popular and intrepid house of commons that had ever met, and after the most important statute that had been passed for some hundred years, Charles found himself in an instant unshackled by his law or his word; once more that absolute king, for whom his sycophants had preached and pleaded, as if awakened from a fearful dream of sounds and sights that such monarchs hate to endure, to the full enjoyment of an unrestrained prerogative. He announced his intentions of government for the future in a long declaration of the causes of the late dissolution of parliament, which, though not without the usual promises to maintain the laws and liberties of the people, gave evident hints that his own interpretation of them must be humbly acquiesced in.[1] This was followed up by a

[1] "It hath so happened," he says, "by the disobedient and seditious carriage of those said ill-affected persons of the house of commons, that we and our regal authority and commandment have been so highly contemned as our kingly office cannot bear, nor any former age can parallel." Rymer. xix. 30.

proclamation that he "should account it presumption for any to prescribe a time to him for parliament, the calling, continuing or dissolving of which was always in his own power; and he should be more inclinable to meet parliament again, when his people should see more clearly into his intents and actions, when such as have bred this interruption shall have received their condign punishment." He afterwards declares that he should "not overcharge his subjects by any more burthens, but satisfy himself with those duties that were received by his father, which he neither could nor would dispense with; but should esteem them unworthy of his protection who should deny them." (Rymer, xix. 62.)

The king next turned his mind, according to his own and his father's practice, to take vengeance on those who had been most active in their opposition to him. A few days after the dissolution, sir John Eliot, Holles, Selden, Long, Strode, and other eminent members of the commons, were committed some to the Tower, some to the King's Bench, and their papers seized. Upon sueing for their habeas corpus, a return was made that they were detained for notable contempts, and for stirring up sedition, alleged in a warrant under the king's sign manual. Their counsel argued against the sufficiency of this return, as well on the principles and precedents employed in the former case of sir Thomas Darnel and his colleagues, as on the late explicit confirmation of them in the Petition of Right. The king's counsel endeavoured, by evading the authority of that enactment, to set up anew that alarming pretence to a power of arbitrary imprisonment, which the late parliament had meant to silence for ever. "A petition in parliament," said the attorney-general Heath, "is no law, yet it is for the honour and dignity of the king to observe it faithfully; but it is the duty of the people not to stretch it beyond the words and intention of the king. And no other construction can be made of the petition, than that it is a confirmation of the ancient liberties and rights of the subjects. So that now the case remains in the same quality and degree as it was before the petition." Thus, by dint of a sophism which turned into ridicule the whole proceedings of the late parliament, he pretended to recite afresh the authorities on which he had formerly relied, in order to prove that one committed by the command of the king or privy council is not bailable. The judges, timid and servile, yet desirous to keep some measures with their own consciences, or looking forward to the wrath of future parliaments, wrote what Whitelock calls "a humble and stout letter" to the king that they were bound to bail the prisoners; but requested that he would send his direction to do so.[1] The gentlemen in custody were, on this intimation, removed to the Tower; and the king, in a letter to the court, refused permission for them to appear on the day when judgment was to be given. Their restraint was thus protracted through the long vacation; towards the close of which, Charles, sending for two of the judges, told them he was content the prisoners should be bailed, notwithstanding their obstinacy in refusing

[1] Whitelock's Memorials, p. 14. Whitelock's father was one of the judges of the king's bench; his son takes pains to exculpate him from the charge of too much compliance, and succeeded so well with the long parliament that when they voted chief-justice Hyde and justice Jones guilty of delay in not bailing these gentlemen, they voted also that Croke and Whitelock were not guilty of it. The proceedings, as we now read them, hardly warrant this favourable distinction. Parl. Hist. ii. 869. 876.

to present a petition, declaring their sorrow for having offended him. In the ensuing Michaelmas term accordingly they were brought before the court, and ordered not only to find bail for the present charge, but sureties for their good behaviour. On refusing to comply with this requisition, they were remanded to custody.

The attorney-general, dropping the charge against the rest, exhibited an information against sir John Eliot for words uttered in the house; namely, That the council and judges had conspired to trample under foot the liberties of the subject; and against Mr. Denzil Holles and Mr. Valentine for a tumult on the last day of the session; when the speaker having attempted to adjourn the house by the king's command, had been forcibly held down in the chair by some of the members, while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offences were supposed to be committed in parliament, and consequently not punishable in any other place. This brought forward the great question of privilege, on the determination of which the power of the house of commons, and consequently the character of the English constitution, seemed evidently to depend.

Freedom of speech, being implied in the nature of a representative assembly, called to present grievances and suggest remedies, could not stand in need of any special law or privilege to support it. But it was also sanctioned by positive authority. The speaker demands it at the beginning of every parliament among the standing privileges of the house; and it had received a sort of confirmation from the legislature by an act passed in the fourth year of Henry VIII., on occasion of one Strode, who had been prosecuted and imprisoned in the Stannary court, for proposing in parliament some regulations for the tinners in Cornwall; which annuls all that had been done, or might hereafter be done, towards Strode, for any matter relating to the parliament, in words so strong as to form, in the opinion of many lawyers, a general enactment. The judges however held, on the question being privately sent to them by the king, that the statute concerning Strode was a particular act of parliament extending only to him and those who had joined with him to prefer a bill to the commons concerning tinners; but that although the act were private and extended to them alone, yet it was no more than all other parliament men, by privilege of the house, ought to have; namely, freedom of speech concerning matters there debated.[1]

It appeared by a constant series of precedents, the counsel for Eliot and his friends argued, that the liberties and privileges of parliament could only be determined therein, and not by any inferior court; that the judges had often declined to give their opinions on such subjects, alleging that they were beyond their jurisdiction; that the words imputed to Eliot were in the nature of an accusation of persons in power, which the commons had an undoubted right to prefer; that no one would venture to complain of grievances in parliament, if he should be subjected to punishment at the discretion of an inferior tribunal; that whatever instances had occurred of punishing the alleged offences of

[1] Strode's act is printed in Hatsell's Precedents, vol. i. p. 80., and in several other books, as well as in the great edition of Statutes of the Realm. It is worded, like many of our ancient laws, so confusedly, as to make its application uncertain; but it rather appears to me not to have been intended as a public act.

members after a dissolution, were but acts of power, which no attempt had hitherto been made to sanction; finally, that the offences imputed might be punished in a future parliament.

The attorney-general replied to the last point, that the king was not bound to wait for another parliament; and moreover, that the house of commons was not a court of justice, nor had any power to proceed criminally, except by imprisoning its own members. He admitted that the judges had sometimes declined to give their judgment upon matters of privilege; but contended that such cases had happened during the session of parliament, and that it did not follow, but that an offence committed in the house might be questioned after a dissolution. He set aside the application of Strode's case, as a special act of parliament; and dwelt on the precedent of an information preferred in the reign of Mary against certain members for absenting themselves from their duty in parliament, which, though it never came to a conclusion, was not disputed on the ground of right.

The court were unanimous in holding that they had jurisdiction, though the alleged offences were committed in parliament, and that the defendants were bound to answer. The privileges of parliament did not extend, one of them said, to breaches of the peace, which was the present case; and all offences against the crown, said another, were punishable in the court of King's Bench. On the parties refusing to put in any other plea, judgment was given that they should be imprisoned during the king's pleasure, and not released without giving surety for good behaviour, and making submission; that Eliot, as the greatest offender and ringleader, should be fined in 2000*l.*, Holles and Valentine a smaller amount. (State Trials, v. iii. from Rushworth.)

Eliot, the most distinguished leader of the popular party, died in the Tower without yielding to the submission required. In the long parliament, the commons came to several votes on the illegality of all these proceedings, both as to the delay in granting their habeas corpus, and the overruling their plea to the jurisdiction of the King's Bench. But the subject was revived again in a more distant and more tranquil period. In the year 1667, the commons resolved that the act of 4 H. VIII. concerning Strode was a general law, "extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning or declaring of any matter or matters, in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament." They resolved also that the judgment given 5 Car. I. against sir John Eliot, Denzil Holles, and Benjamin Valentine, is an illegal judgment, and against the freedom and privilege of parliament. To these resolutions the lords gave their concurrence. And Holles, then become a peer, having brought the record of the King's Bench by writ of error before them, they solemnly reversed the judgment. (Hatsell, p. 212. 242.) An important decision with respect to our constitutional law, which has established beyond controversy the great privilege of unlimited freedom of speech in parliament; unlimited, I mean, by any authority except that by which the house itself ought always to restrain indecent and disorderly language in its members. It does not, however, appear

to be a necessary consequence from the reversal of this judgment, that no actions committed in the house by any of its members are punishable in a court of law. The argument in behalf of Holles and Valentine goes indeed to this length; but it was admitted in the debate on the subject in 1667, that their plea to the jurisdiction of the King's Bench could not have been supported as to the immuted riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in parliament. And it is obvious that the house could inflict no adequate punishment in the possible case of treason or felony committed within its walls; nor, if its power of imprisonment be limited to the session, in that of many smaller offences.

The customs on imported merchandises were now rigorously enforced. (Rushworth.) But the late discussions in parliament, and the growing disposition to probe the legality of all acts of the crown, rendered the merchants more discontented than ever. Richard Chambers, having refused to pay any further duty for a bale of silks than might be required by law, was summoned before the privy-council. In the presence of that board, he was provoked to exclaim, that in no part of the world, not even in Turkey, were the merchants so screwed and wrung as in England. For these hasty words an information was preferred against him in the star-chamber; and the court, being of opinion that the words were intended to make the people believe, that his majesty's happy government might be termed Turkish tyranny, manifested their laudable abhorrence of such tyranny by sentencing him to pay a fine of 2000*l.*, and to make a humble submission. Chambers, a sturdy puritan, absolutely refused to subscribe the form of submission tendered to him, and was of course committed to prison. But the court of King's Bench admitted him to bail on a habeas corpus; for which, as Whitelock tells us, they were reprimanded by the council.[1]

There were several instances, besides this just mentioned, wherein the judges manifested a more courageous spirit than they were able constantly to preserve; and the odium under which their memory labours for a servile compliance with the court, especially in the case of ship-money, renders it but an act of justice to record those testimonies they occasionally gave of a nobler sense of duty. They unanimously declared, when Charles expressed a desire that Felton, the assassin of the duke of Buckingham, might be put to the rack in order to make him discover his accomplices, that the law of England did not allow the use of torture. This is a remarkable proof that, amidst all the arbitrary principles and arbitrary measures of the time, a truer sense of the inviolability of law had begun to prevail, and that the free constitution of England was working off the impurities with which violence had stained it. For, though it be most certain that the law never recognised the use of torture, there had been many instances of its employment, and even within a few years.[2] In this public assertion

[1] Rushworth. State Trials, iii. 373. Whitelock, p. 12. Chambers applied several times for redress to the long parliament on account of this and subsequent injuries, but seems to have been cruelly neglected, while they were voting large sums to those who had suffered much less, and he died in poverty.

[2] I have remarked in former passages that the rack was much employed, especially against Roman catholics under Elizabeth. Those accused of the gunpowder conspiracy were also

of its illegality, the judges conferred an eminent service on their country, and doubtless saved the king and his council much additional guilt and infamy which they would have incurred in the course of their career. They declared, about the same time, on a reference to them concerning certain disrespectful words alleged to have been spoken by one Pine against the king, that no words can of themselves amount to treason within the statute of Edward III.[1] They resolved, some years after, that Prynne's, Burton's, and Bastwick's libels against the bishops were no treason.[2] In their old controversy with the ecclesiastical jurisdiction, they were inflexibly tenacious. An action having been brought against some members of the high-commission court for false imprisonment, the king, on Laud's remonstrance, sent a message to desire that the suit might not proceed till he should have conversed with the judges. The chief-justice made answer that they were bound by their oaths not to delay the course of justice; and after a contention before the privy-council, the commissioners were compelled to plead.[3]

Such instances in it of firmness serve to extenuate those unhappy deficiencies which are more notorious in history. Had the judges been as numerous and independent as those of the parliament of Paris, they would not probably have been wanting in equal vigour. But holding their offices at the king's will, and exposed to the displeasure of his council whenever they opposed any check to the prerogative, they held a vacillating course, which made them obnoxious to those who sought for despotic power, while it forfeited the esteem of the nation.

In pursuance of the system adopted by Charles's ministers, they had recourse to exactions, some odious and obsolete, some of very questionable legality, and others clearly against law. Of the former class may be reckoned the compositions for not taking the order of knighthood. The early kings of England, Henry III., and Edward I., very little in the spirit of chivalry, had introduced the custom of summoning their military tenants, holding 20*l.* per annum, to receive knighthood at their hands. Those who declined this honour were permitted to redeem their absence by a moderate fine.[4] Elizabeth, once in her reign, and

severely tortured; and others in the reign of James. Coke, in the countess of Shrewsbury's case, 1612, State Trials, ii. 773., mentions it as a privilege of the nobility, that "their bodies are not subject to torture in causâ criminis læsæ majestatis." Yet, in his third Institute, p. 35., he says, the "rack in the Tower was brought in by the duke of Exeter, under Henry VI., and is, therefore, familiarly called the duke of Exeter's daughter;" and after quoting Fortescue to prove the practice illegal, concludes—"There is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in." Bacon observes, in a tract written in 1603: "In the highest cases of treason, torture is used for discovery, and not for evidence." i. 393. See also Aikin's Mem. of James I., ii. 158.

[1] State Trials, iii. 359. This was a very important determination, and put an end to such tyrannical persecution of Roman catholics for bare expressions of opinion as had been used under Elizabeth and James.

[2] Rushworth Abridged, ii. 253. Strafford's Letters, ii. 74.

[3] Whitelock, 16. Kennet, 63. We find in Rymer, xix. 279., a commission, dated May 6, 1631, enabling the privy council at all times to come, "to hear and examine all differences which shall arise betwixt any of our courts of justice, especially between the civil and ecclesiastical jurisdictions," &c. This was in all probability contrived by Laud, or some of those who did not favour the common law. But I do not find that anything was done under this commission, which, I need hardly say, was as illegal as most of the king's other proceedings.

[4] 2 Inst. 593. The regulations contained in the statute de militibus, 1 Ed. II., though apparently a temporary law, seem to have been considered by Coke as permanently binding. Yet in this statute the estate requiring knighthood, or a composition for it, is fixed at 20*l.* per annum.

James, had availed themselves of this ancient right. But the change in the value of money rendered it far more oppressive than formerly, though limited to the holders of 40*l.* per annum in military tenure. Commissioners were now appointed to compound with those who had neglected some years before to obey the proclamation, summoning them to receive knighthood at the king's coronation.[1] In particular instances, very severe fines are recorded to have been imposed upon defaulters, probably from some political resentment. (Rushworth Abr. ii. 102.)

Still greater dissatisfaction attended the king's attempt to revive the ancient laws of the forest,—those laws, of which, in elder times, so many complaints had been heard, exacting money by means of pretensions which long disuse had rendered dubious, and showing himself to those who lived on the borders of those domains in the hateful light of a litigious and encroaching neighbour. The earl of Holland held a court almost every year, as chief-justice in eyre, for the recovery of the king's forestal rights, which made great havoc with private property. No prescription could be pleaded against the king's title, which was to be found indeed by the inquest of a jury, but under the direction of a very partial tribunal. The royal forests in Essex were so enlarged, that they were hyperbolically said to include the whole county. (Strafford's Letters, i. 335.) The earl of Southampton was nearly ruined by a decision that stripped him of his estate near the New Forest. (Id. p. 463. 467.) The boundaries of Rockingham forest were increased from six miles to sixty, and enormous fines imposed on the trespassers; lord Salisbury being amerced in 20,000*l.*, lord Westmoreland in 19,000*l.*, sir Christopher Hatton in 12,000*l.*[2] It is probable that much of these was remitted.

A greater profit was derived from a still more pernicious and indefensible measure, the establishment of a chartered company with exclusive privileges of making soap. The recent statute against monopolies seemed to secure the public against this species of grievance. Noy, however, the attorney-general, a lawyer of uncommon eminence, and lately a strenuous asserter of popular rights in the house of commons, devised this project, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay eight pounds for every ton of soap made, as well as 10,000*l.* for their charter. For this they were empowered to appoint searchers, and exercise a sort of inquisition over the trade. Those dealers who resisted their interference were severely fined, on informations in the star-chamber. Some

[1] According to a speech of Mr. Hyde in the long parliament, not only military tenants, but all others, and even lessees and merchants, were summoned before the council on this account. Parl. Hist. ii. 918. This was evidently illegal; especially if the Statutum de militibus was in force, which by express words exempts them. Brodie's Hist. of British Empire, ii. 282. There is still some difficulty about this which I cannot clear up, nor comprehend why the title, if it could be had for asking, was so continually declined: unless it were, as Mr. B. hints, that the fees of knighthood greatly exceeded the composition. I suspect that none who could not prove their gentility were admitted to the honour, though the fine was extorted from them. It is said that the king got 100,000*l.* by this resource. Macaulay, ii. 107.

[2] Id. ii. 117. It is well known that Charles made Richmond Park by means of depriving many proprietors not only of common rights, but of their freehold lands. Clarendon, i. 176. It is not clear that they were ever compensated; but I think this probable, as the matter excited no great clamour in the long parliament. And there is in Rymer, xx. 585., a commission to Cottington and others, directing them to compound with the owners of lands within the intended enclosures. Dec. 12, 1634.

years afterwards, however, the king received money from a new corporation of soap-makers, and revoked the patent of the former.[1]

This precedent was followed in the erection of a similar company of starch-makers, and in a great variety of other grants, which may be traced in Rymer's Fœdera and in the proceedings of the long parliament; till monopolies, in transgression or evasion of the late statute, became as common as they had been under James or Elizabeth. The king, by a proclamation at York in 1639, beginning to feel the necessity of diminishing the public odium, revoked all these grants. (Rymer, xx. 340.) He annulled, at the same time, a number of commissions that had been issued in order to obtain money by compounding with offenders against penal statutes. The catalogue of these, as well as of the monopolies, is very curious. The former were in truth rather vexatious than illegal, and sustained by precedents in what were called the golden ages of Elizabeth and James, though at all times the source of great and just discontent.

The name of Noy has acquired an unhappy celebrity by a far more famous invention, which promised to realize the most sanguine hopes that could have been formed of carrying on the government for an indefinite length of time without the assistance of parliament. Shaking off the dust of ages from parchments in the Tower, this man of venal diligence and prostituted learning discovered that the seaports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay, there were instances of a similar demand upon some inland places. Noy himself died almost immediately afterwards. Notwithstanding his apostasy from the public cause, it is just to remark that we have no right to impute to him the more extensive and more unprecedented scheme of ship-money as a general tax, which was afterwards carried into execution. But it sprang by natural consequence from the former measure, according to the invariable course of encroachment, which those who have once bent the laws to their will ever continue to pursue. The first writ issued from the council in October, 1634. It was directed to the magistrates of London and other seaport towns. Reciting the depredations lately committed by pirates, and slightly adverting to the dangers imminent in a season of general war on the continent, it enjoins them to provide a certain number of ships of war of a prescribed tonnage and equipage; empowering them also to assess all the inhabitants for a contribution towards this armament according to their substance. The citizens of London humbly remonstrated that they conceived themselves exempt by sundry charters and acts of parliament from bearing such a charge. But the council peremptorily compelled their submission; and the murmurs of inferior towns were still more easily suppressed. This is said to have cost the city of London 35,000*l.*[2]

[1] Kennet, 94. Rushworth's Abridg. ii. 132. Strafford Letters, i. 446. Rymer, xix. 323. Laud's Diary, 51.

[2] Kennet, 74. 75. Strafford Letters, i. 358. Some petty seaports in Sussex refused to pay ship-money; but finding that the sheriff had authority to distrain on them, submitted. The deputy-lieutenants of Devonshire wrote to the council in behalf of some towns a few miles distant from the sea, that they might be spared from this tax, saying it was a novelty. But they were summoned to London for this, and received a reprimand for their interference. Strafford Letters, i. 872.

There wanted not reasons in the cabinet of Charles for placing the navy at this time on a respectable footing. Algerine pirates had become bold enough to infest the Channel; and what was of more serious importance, the Dutch were rapidly acquiring a maritime preponderance, which excited a natural jealousy, both for our commerce, and the honour of our flag. This commercial rivalry conspired with a far more powerful motive at court, an abhorrence of every thing republican or Calvinistic, to make our course of policy towards Holland not only unfriendly, but insidious and inimical in the highest degree. A secret treaty is extant, signed in 1631, by which Charles engaged to assist the king of Spain in the conquest of that great protestant commonwealth, retaining the isles of Zealand as the price of his co-operation.[1]

Yet with preposterous inconsistency as well as ill-faith, the two characteristics of all this unhappy prince's foreign policy, we find him in the next year carrying on a negotiation with a disaffected party in the Netherlands, in some strange expectation of obtaining the sovereignty on their separation from Spain. Lord Cottington betrayed this intrigue (of which one whom we should little expect to find in these paths of conspiracy, Peter Paul Rubens was the negotiator) to the court of Madrid.[2] It was, in fact, an unpardonable and unprovoked breach of faith, and accounts for the indifference, to say no more, which that government always showed to his misfortunes. Charles, whose domestic position rendered a pacific system absolutely necessary, busied himself far more than common history has recorded with the affairs of Europe. He was engaged in a tedious and unavailing negotiation with both branches of the house of Austria, especially with the court of Madrid, for the restitution of the Palatinate. He took a much greater interest than his father had done in the fortunes of his sister and her family; but, like his father, he fell into the delusion, that the cabinet of Madrid, for whom he could effect but little, or that of Vienna, to whom he could offer nothing, would so far realize the cheap professions of friendship they were always making, as to sacrifice a conquest wherein the preponderance of the house of Austria and the catholic religion in Germany were so deeply concerned. They drew him on accordingly through the labyrinths of diplomacy; assisted, no doubt, by that party in his council, composed at this time of lord Cottington, secretary Windebanke, and some others, who had always favoured Spanish connexions.[3] It appears that the fleet raised in 1634 was intended, according to an agreement entered into with Spain, to restrain the Dutch from fishing in the English seas, nay even, as opportunities should arise, to co-operate hostilely with that of Spain.[4]

[1] Clarendon State Papers, i. 49. and ii. App p. xxvi.

[2] The curious intrigue, before unknown, I believe, to history, was brought to light by lord Hardwicke. State Papers, ii. 54.

[3] See Clarendon State Papers, i. 490., for a proof of the manner in which, through the Hispano-popish party in the cabinet, the house of Austria hoped to dupe and dishonour Charles.

[4] Clarendon State Papers, i. 109. et post. Five English ships out of twenty were to be at the charge of the king of Spain. Besides this agreement, according to which the English were only bound to protect the ships of Spain within their own seas, or the limits claimed as such, there were certain secret articles, signed Dec. 16, 1634; by one of which Charles bound himself, in case the Dutch should not make restitution of some Spanish vessels taken by them

After above two years spent in these negotiations, Charles discovered that the house of Austria were deceiving him; and still keeping in view the restoration of his nephew to the electoral dignity and territories, entered into stricter relations with France; a policy which might be deemed congenial to the queen's inclinations, and recommended by her party in his council, the earl of Holland, sir Henry Vane, and perhaps by the earls of Northumberland and Arundel. In the first impulse of indignation at the duplicity of Spain, the king yielded so far to their councils as to meditate a declaration of war against that power.[1] But his own cooler judgment, or the strong dissuasions of Strafford, who saw that external peace was an indispensable condition for the security of despotism,[2] put an end to so imprudent a project; though he preserved, to the very meeting of the long parliament, an intimate connexion with France, and even continued to carry on negotiations, tedious and insincere, for an offensive alliance. (Sidney Papers, ii. 613.) Yet he still made, from time to time, similar overtures to Spain. (Clarendon State Papers, ii. 16.) And this unsteadiness, or rather duplicity, which could not easily be concealed from two cabinets eminent for their secret intelligence, rendered both of them his enemies, and the instruments, as there is much reason to believe, of some of his greatest calamities. It is well known that the Scots covenanters were in close connexion with Richelieu; and many circumstances render it probable, that the Irish rebellion was countenanced and instigated both by him and by Spain.

This desire of being at least prepared for war, as well as the general system of stretching the prerogative beyond all limits, suggested an extension of the former writs from the seaports to the whole kingdom. Finch, chief-justice of the common pleas, has the honour of this improvement on Noy's scheme. He was a man of little learning or respectability, a servile tool of the despotic Gabal; who, as speaker of the last parliament, had, in obedience to a command from the king to adjourn, refused to put the question upon a remonstrance moved in the house. By the new writs for ship-money, properly so denominated, since the former had only demanded the actual equipment of vessels

within the English seas, to satisfy the court of Spain himself out of ships and goods belonging to the Dutch; and by the second, to give secret instructions to the commanders of his ships, that when those of Spain and Flanders should encounter their enemies at open sea, far from his coasts and limits, they should assist them if over-matched, and should give the like help to the prizes which they should meet, taken by the Dutch, that they might be freed and set at liberty; taking some convenient pretext to justify it, that the Hollanders might not hold it an act of hostility. But no part of this treaty was to take effect till the imperial ban upon the elector palatine should be removed. Id. 215.

[1] Clarendon State Papers, i. 721. 761.

[2] Strafford Papers, ii. 52. 53. 60. 66. Richelieu sent d'Estrades to London, in 1637, according to Père Orleans, to secure the neutrality of England in case of his attacking the maritime towns of Flanders conjointly with the Dutch. But the ambassador was received haughtily, and the neutrality refused; which put an end to the scheme, and so irritated Richelieu, that he sent a priest named Chamberlain to Edinburgh the same year, in order to foment troubles in Scotland. Révol. d'Anglet. iii. 42. This is confirmed by d'Estrades himself. See note in Sidney Papers, ii. 447., and Harris's Life of Charles, 189; also Lingard, x. 69. The connection of the Scots leaders with Richelieu in 1639 is matter of notorious history. It has lately been confirmed and illustrated by an important note in Mazure, Hist. de la Révolution en 1688, ii. 402. It appears by the above-mentioned note of M. Mazure, that the celebrated letter of the Scotch lords, addressed "Au Roy," was really sent, and is extant. There seems reason to think that Henrietta joined the Austrian faction about 1639; her mother being then in England, and very hostile to Richelieu. This is in some degree corroborated by a passage in a letter of lady Carlisle. Sidney Papers, ii. 614.

for which inland counties were of course obliged to compound, the sheriffs were directed to assess every landholder and other inhabitant according to their judgment of his means, and to enforce the payment by distress.[1]

This extraordinary demand startled even those who had hitherto sided with the court. Some symptoms of opposition were shown in different places, and actions brought against those who had collected the money. But the greater part yielded to an overbearing power, exercised with such rigour, that no one in this king's reign who had ventured on the humblest remonstrance against any illegal act had escaped without punishment. Indolent and improvident men satisfied themselves that the imposition was not very heavy, and might not be repeated. Some were content to hope that their contribution, however unduly exacted, would be faithfully applied to public ends. Others were overborne by the authority of pretended precedents, and could not yet believe that the sworn judges of the law would pervert it to its own destruction. The ministers prudently resolved to secure, not the law, but its interpreters, on their side. The judges of assize were directed to inculcate on their circuits the necessary obligation of forwarding the king's service by complying with his writ. But as the measure grew more obnoxious, and strong doubts of its legality came more to prevail, it was thought expedient to publish an extra-judicial opinion of the twelve judges, taken at the king's special command, according to the pernicious custom of that age. They gave it as their unanimous opinion, that "when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition and victuals, and for such time as he should think fit, for the defence and safeguard of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole judge both of the danger, and when and how the same was to be prevented and avoided."

This premature declaration of the judges which was publicly read by the lord keeper Coventry in the star-chamber, did not prevent a few intrepid persons from bringing the question solemnly before them, that the liberties of their country might at least not perish silently, nor those who had betrayed them avoid the responsibility of a public avowal of their shame. The first that resisted was the gallant Richard Chambers, who brought an action against the lord-mayor for imprisoning him on account of his refusal to pay his assessment on the former writ. The magistrates pleaded the writ as a special justification; when Berkley one of the judges of the king's bench, declared that there was a rule of law and a rule of government, that many things which could not be done by the first rule might be done by the other, and would not suffer counsel to argue against the lawfulness of ship-money.[2] The next were lord Saye and Mr. Hampden, both of whom appealed to the

[1] See the instructions in Rushworth, ii. 214.

[2] Rushworth, 253. The same judge declared afterwards, in a charge to the grand jury of York, that ship-money was an inseparable flower of the crown, glancing at Hutton and Croke for their opposition to it. Id. 267.

justice of their country; but the famous decision which has made the latter so illustrious put an end to all attempts at obtaining redress by course of law.

Hampden, it seems hardly necessary to mention, was a gentleman of good estate in Buckinghamshire, whose assessment to the contribution for ship-money demanded from his county amounted only to twenty shillings.[1] The cause, though properly belonging to the court of exchequer, was heard, on account of its magnitude, before all the judges in the exchequer-chamber.[2] The precise question, so far as related to Mr. Hampden, was, Whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defence of the kingdom? It was argued by St. John and Holborne in behalf of Hampden; by the solicitor-general Littleton, and the attorney-general Banks, for the crown. (State Trials, iii. 826–1252.)

The law and constitution of England, the former maintained, had provided in various ways for the public safety and protection against enemies. First, there were the military tenures, which bound great part of the kingdom to a stipulated service at the charge of the posessors. The cinque ports also, and several other towns, some of them not maritime, held by a tenure analogous to this; and were bound to furnish a quota of ships or men, as the condition of their possessions and privileges. These for the most part are recorded in Domesday-book, though now in general grown obsolete. Next to this specific service, our constitution had bestowed on the sovereign his certain revenues, the fruits of tenure, the profits of his various minor prerogatives; whatever in short he held in right of his crown, was applicable, so far as it could be extended, to the public use. It bestowed on him, moreover, and perhaps with more special application to maritime purposes, the customs on importation of merchandise. These indeed had been recently augmented far beyond ancient usage. "For these modern impositions," says St. John, "of the legality thereof I intend not to speak: for in case his majesty may impose upon merchandise what himself pleaseth, there will be less cause to tax the inland counties; and in case he cannot do it, it will be strongly presumed that he can much less tax them."

But as the ordinary revenues might prove quite unequal to great exigencies, the constitution has provided another means, as ample and sufficient as it is lawful and regular,—parliamentary supply. To this the kings of England have in all times had recourse; yet princes are not apt to ask as a concession what they might demand of right. The frequent loans and benevolences which they have required, though not always defensible by law, are additional proofs that they possessed no general right of taxation. To borrow on promise of repayment, to

[1] As it is impossible to reconcile the trifling amount of this demand with Hampden's known estate, the tax being probably not much less than sixpence in the pound, it has been conjectured that his property was purposely rated low. But it is hard to perceive any motive for this indulgence; and it seems more likely that a nominal sum was fixed upon in order to try the question; or that, as is more probable, it was only assessed on a part of his estate.

[2] There seems to have been something unusual, if not irregular, in this part of the proceeding. The barons of the exchequer called the other judges, not only by way of advice but direction, as the chief baron declares. State Trials, 1203. And a proof of this is, that the court of exchequer being equally divided, judgment could have been given by the barons alone.

solicit, as it were, alms from their subjects, is not the practice of sovereigns whose prerogatives entitle them to exact money. Those loans had sometimes been repaid, expressly to discharge the king's conscience. And a very arbitrary prince, Henry VIII., had obtained acts of parliament to release him from the obligation of repayment.

These merely probable reasonings prepare the way for that conclusive and irresistible argument that was founded on statute law. Passing slightly over the charter of the Conqueror, that his subjects shall hold their lands free from all unjust tallage, and the clause in John's Magna Charta, that no aid or scutage should be assessed but by consent of the great council (a provision not repeated in that of Henry III.) the advocates of Hampden relied on the 25 E. I., commonly called the Confirmatio Chartarum, which for ever abrogated all taxation without consent of parliament; and this statute itself, they endeavoured to prove, was grounded on requisitions very like the present, for the custody of the sea, which Edward had issued the year before. Hence it was evident that the saving contained in that act for the accustomed aids and prises could not possibly be intended, as the opposite counsel would suggest, to preserve such exactions as ship-money; but related to the established feudal aids, and to the ancient customs on merchandise. They dwelt less however (probably through fear of having this exception turned against them), on this important statute than on one of more celebrity, but of very equivocal genuineness, denominated De Tallagio non Concedendo; which is nearly in the same words as the Confirmatio Chartarum, with the omission of the above-mentioned saving. More than one law, enacted under Edward III., re-asserts the necessity of parliamentary consent to taxation. It was indeed the subject of frequent remonstrance in that reign, and the king often infringed this right. But the perseverance of the commons was successful, and ultimately rendered the practice conformable to the law. In the second year of Richard II., the realm being in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out of parliament, advising that one should be speedily summoned. This precedent was the more important, as it tended to obviate that argument from peril and necessity, on which the defenders of ship-money were wont to rely. But they met that specious plea more directly. They admitted that a paramount overruling necessity silences the voice of law; that in actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; that not only the sovereign, but each man in respect of his neighbour might do many things absolutely illegal at other seasons; and this served to distinguish the present case from some strong acts of prerogative exerted by Elizabeth in 1588, when the liberties and religion of the people were in the most apparent jeopardy But here there was no overwhelming danger; the nation was at peace with all the world: could the piracies of Turkish corsairs, or even the insolence of rival neighbours, be reckoned among those instant perils for which a parliament would provide too late?

To the precedents alleged on the other side, it was replied, that no one of them met the case of an inland county; that such as were before the 25 E. I. were sufficiently repelled by that statute, such as occurred under Edward III. by the later statutes, and by the remonstrances of parliament during his reign; and there were but very few afterwards. But that, in a matter of statute law, they ought not to be governed by precedents, even if such could be adduced. Before the latter end of Edward I.'s reign, St. John observes, "all things concerning the king's prerogative and the subjects' liberties were upon uncertainties." "The government," says Holborne truly, "was more of force than law." And this is unquestionably applicable, in a less degree, to many later ages.

Lastly, the petition of right, that noble legacy of a slandered parliament, reciting and confirming the ancient statutes, had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament. This latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of ship-money.

The king's counsel, in answer to these arguments, appealed to that series of records which the diligence of Noy had collected. By far the greater part of these were commissions of array. But several, even of those addressed to inland towns, (and, if there were no service by tenure in the case, it does not seem easy to distinguish these in principle from counties,) bore a very strong analogy to the present. They were, however, in early times. No sufficient answer could be offered to the statutes that had prohibited unparliamentary taxation. The attempts made to elude their force were utterly ineffectual, as those who are acquainted with their emphatic language may well conceive. But the council of Charles the First, and the hirelings who ate their bread, disdained to rest their claim of ship-money (big as it was with other and still more novel schemes) on obscure records, or on cavils about the meaning of statutes. They resorted rather to the favourite topic of the times, the intrinsic, absolute authority of the king. This the attorney-general Banks placed in the very front of his argument. "This power," says he, "is innate in the person of an absolute king, and in the person of the kings of England. All magistracy it is of nature, and obedience and subjection it is of nature. This power is not any ways derived from the people, but reserved unto the king when positive laws first began. For the king of England, he is an absolute monarch; nothing can be given to an absolute prince but what is inherent in his person. He can do no wrong. He is the sole judge, and we ought not to question him. Where the law trusts, we ought not to distrust. The acts of parliament," he observed, "contained no express words to take away so high a prerogative; and the king's prerogative, even in lesser matters, is always saved wherever express words do not restrain it."

But this last argument appearing too modest for some of the judges who pronounced sentence in this cause, they denied the power of parliament to limit the high prerogatives of the crown. "This imposition without parliament," says justice Crawley, "appertains to the king

originally, and to the successor ipso facto, if he be a sovereign in right of his sovereignty from the crown. You cannot have a king without these royal rights, no, not by act of parliament." "Where Mr. Holborne," says justice Berkley, "supposed a fundamental policy in the creation of the frame of this kingdom, that in case the monarch of England should be inclined to exact from his subjects at his pleasure, he should be restrained, for that he could have nothing from them, but upon a common consent in parliament; he is utterly mistaken herein. The law knows no such king-yoking policy. The law is itself an old and trusty servant of the king's; it is his instrument or means which he useth to govern his people by: I never read nor heard that lex was rex; but it is common and most true, that rex is lex." Vernon, another judge, gave his opinion in few words: "That the king, pro bono publico, may charge his subjects for the safety and defence of the kingdom, notwithstanding any act of parliament, and that a statute derogatory from the prerogative doth not bind the king; and the king may dispense with any law in cases of necessity." Finch, the adviser of the ship-money, was not backward to employ the same argument in its behalf. "No act of parliament," he told them, "could bar a king of his regality, as that no land should hold of him, or bar him of the allegiance of his subjects, or the relative on his part, as trust and power to defend his people; therefore acts of parliament to take away his royal power in the defence of his kingdom are void; they are void acts of parliament to bind the king not to command the subjects, their person, and goods, and I say, their money too; for no acts of parliament make any difference."

Seven of the twelve judges, namely, Finch, chief-justice of the common pleas, Jones, Berkley, Vernon, Crawley, Trevor, and Weston, gave judgment for the crown. Brampston, chief-justice of the king's bench, and Davenport, chief-baron of the exchequer, pronounced for Hampden, but on technical reasons, and adhering to the majority on the principal question. Denham, another judge of the same court, being extremely ill, gave a short written judgment in favour of Hampden. But justices Croke and Hutton, men of considerable reputation and experience, displayed a most praiseworthy intrepidity in denying, without the smallest qualification, the alleged prerogative of the crown, and the lawfulness of the writ for ship-money. They had unfortunately signed, along with the other judges, the above-mentioned opinion in favour of the right. For this they made the best apology they could, that their voice was concluded by the majority. But in truth it was the ultimate success that sometimes attends a struggle between conscience and self-interest or timidity.[1]

The length to which this important cause was protracted, six months having elapsed from the opening speech of Mr. Hampden's counsel to the final judgment, was of infinite disservice to the crown. During this long period, every man's attention was directed to the exchequer-

[1] Croke, whose conduct on the bench in other political questions was not without blemish, had resolved to give judgment for the king, but was withheld by his wife, who implored him not to sacrifice his conscience for fear of any danger or prejudice to his family, being content to suffer any misery with him, rather than to be an occasion for him to violate his integrity. Whitelock, p. 25. Of such high-minded and inflexible women our British history produces many examples.

chamber. The convincing arguments of St. John and Holborne, but still more the division on the bench, increased their natural repugnance to so unusual and dangerous a prerogative.[1] Those who had trusted to the faith of the judges were undeceived by the honest repentance of some, and looked with indignation on so prostituted a crew. That respect for courts of justice, which the happy structure of our judicial administration has in general kept inviolate, was exchanged for distrust, contempt, and desire of vengeance. They heard the speeches of some of the judges with more displeasure than even their final decision. Ship-money was held lawful by Finch and several other judges, not on the authority of precedents, which must in their nature have some bounds, but on principles subversive of any property or privilege in the subject. Those paramount rights of monarchy, to which they appealed to-day in justification of ship-money, might to-morrow serve to supersede other laws, and maintain new exertions of despotic power. It was manifest, by the whole strain of the court lawyers, that no limitations on the king's authority could exist but by the king's sufferance. This alarming tenet, long bruited among the churchmen and courtiers, now resounded in the halls of justice. But ship-money, in consequence, was paid with far less regularity and more reluctance than before.[2] The discontent that had been tolerably smothered, was now displayed in every county; and though the council did not flinch in the least from exacting payment, nor willingly remit any part of its rigour towards the uncomplying, it was impossible either to punish the great body of the country gentlemen and citizens, or to restrain their murmurs by a few examples. Whether in consequence of this unwillingness, or for other reasons, the revenue levied in different years under the head of ship-money is more fluctuating than we should expect from a fixed assessment; but may be reckoned at an average sum of 200,000*l.*[3]

It would, doubtless, be unfair to pass a severe censure on the government of Charles the First for transgressions of law, which a long course of precedents might render dubious, or at least extenuate. But this common apology for his administration, on which the artful defence of Hume is almost entirely grounded, must be admitted cautiously, and not until we have well considered how far such precedents could be brought to support it. This is particularly applicable to his proclamations. I have already pointed out the comparative novelty of these unconstitutional ordinances, and their great increase under James. They had not been fully acquiesced in; the commons had remonstrated against their abuse: and Coke, with other judges, had endeavoured to fix limits to their authority, very far within that

[1] Laud writes to lord Wentworth, that Croke and Hutton had both gone against the king very sourly. "The accidents which have followed upon it already are these: First, the faction are grown very bold. Secondly, the king's monies come in a great deal more slowly than they did in former years, and that to a very considerable sum. Thirdly, it puts thoughts into wise and moderate men's heads, which were better out; for they think if the judges, which are behind, do not their parts both exceeding well and thoroughly, it may much distemper this extraordinary and great service." Strafford Letters, ii. 170.

[2] It is notoriously known that pressure was borne with much more cheerfulness before the judgment for the king than ever it was after. Clarendon, p. 122.

[3] Rushworth Abr. ii. 341. Clarendon State Papers, i. 600. It is said by Heylin that the clergy were much spared in the assessment of ship-money. Life of Laud, 302.

which they arrogated. It can hardly therefore be said, that Charles's council were ignorant of their illegality; nor is the case at all parallel to that of general warrants, or any similar irregularity into which an honest government may inadvertently be led. They serve at least to display the practical state of the constitution, and the necessity of an entire reform in its spirit.

The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, prohibiting or putting under restraint the importation of various articles, and the home growth of others, or establishing regulations for manufactures. (Rymer Passim.) Prices of several minor articles were fixed by proclamation, and in one instance this was extended to poultry, butter, and coals.[1] The king declares by a proclamation that he had incorporated all tradesmen and artificers within London and three miles round; so that no person might set up any trade, without having served a seven years' apprenticeship, and without admission into such corporation. (Id. xx. 113.) He prohibits in like manner any one from using the trade of a maltster, or that of a brewer, without admission into the corporations of maltsters or brewers erected for every county. (Id. 157.) I know not whether these projects were in any degree founded on the alleged pretext of correcting abuses, or were solely designed to raise money by means of these corporations. We find, however, a revocation of the restraint on malting and brewing soon after. The illegality of these proclamations is most unquestionable.

The rapid increase of London continued to disquiet the court. It was the stronghold of political and religious disaffection. Hence the prohibitions of erecting new houses, which had begun under Elizabeth, were continually repeated.[2] They had indeed some laudable objects in view; to render the city more healthy, cleanly, and magnificent, and by prescribing the general use of brick instead of wood, as well as by improving the width and regularity of the streets, to afford the best security against fires, and against those epidemical diseases which visited the metropolis with unusual severity in the earlier years of this reign. The most jealous censor of royal encroachments will hardly object to the proclamations enforcing certain regulations of police in some of those alarming seasons.

It is probable, from the increase which we know to have taken place in London during this reign, that licences for building were easily obtained. The same supposition is applicable to another class of proclamation, enjoining all persons who had residences in the country to quit the capital and repair to them. (Rymer, xix. 375.) Yet that these were not always a dead letter, appears from an information exhibited in the star-chamber against seven lords, sixty knights, and one hundred esquires, besides many ladies, for disobeying the king's

[1] Rymer, xix. 512. It may be curious to mention some of these. The best turkey was to be sold at 4*s.* 6*d.*; the best goose at 2*s.* 4*d.*; the best pullet, 1*s.* 8*d.*, three eggs for a penny; fresh butter at 5*d.* in summer, at 6*d.* in winter. This was in 1634.

[2] Id. xviii., 33. et alibi. A commission was granted to the earl of Arundel and others, May 30, 1625 to inquire what houses, shops, &c. had been built for ten years past, especially since the last proclamation, and to commit the offenders. It recites the care of Elizabeth and James to have the city built in an uniform manner with brick, and also to clear it *from* undertenants and base people who live by begging and stealing. Id. xviii. 97.

proclamation, either by continuing in London, or returning to it after a short absence. (Rushworth Abr. ii. 232.) The result of this prosecution, which was probably only intended to keep them in check, does not appear. No proclamation could stand in need of support from law, while this arbitrary tribunal assumed a right of punishing misdemeanours. It would have been a dangerous aggravation of any delinquent's offence to have questioned the authority of a proclamation, or the jurisdiction of the council.

The security of freehold rights had been the peculiar boast of the English law. The very statute of Henry VIII., which has been held up to so much infamy, while it gave the force of law to his proclamations, interposed its barrier in defence of the subject's property. The name of freeholder, handed down with religious honour from an age when it conveyed distinct privileges, and as it were a sort of popular nobility, protected the poorest man against the crown's and the lord's rapacity. He at least was recognised as the liber homo of Magna Charta, who could not be disseised of his tenements and franchises. His house was his castle, which the law respected, and which the king dared not enter. Even the public good must give way to his obstinacy; nor had the legislature itself as yet compelled any man to part with his lands for a compensation which he was loath to accept. The council and star-chamber had very rarely presumed to meddle with his right; never perhaps where it was acknowledged and ancient. But now this reverence of the common law for the sacredness of real property was derided by those who revered nothing as sacred but the interests of the church and crown. The privy council, on a suggestion that the demolition of some houses and shops in the vicinity of St. Paul's would show the cathedral to more advantage, directed that the owners should receive such satisfaction as should seem reasonable; or on their refusal the sheriff was required to see the buildings pulled down, "it not being thought fit the obstinacy of those persons should hinder so considerable a work." (Rushworth, ii. 79.) By another order of council, scarcely less oppressive and illegal, all shops in Cheapside and Lombard-street, except those of goldsmiths, were directed to be shut up, that the avenue to St. Paul's might appear more splendid; and the mayor and aldermen were repeatedly threatened for remissness in executing this mandate of tyranny. (Id. p. 313.)

In the great plantation of Ulster by James, the city of London had received a grant of extensive lands in the county of Derry on certain conditions prescribed in their charter. The settlement became flourishing, and enriched the city. But the wealth of London was always invidious to the crown, as well as to the needy courtiers. On an information filed in the star-chamber for certain alleged breaches of their charter, it was not only adjudged to be forfeited to the king, but a fine of 70,000*l.* was imposed on the city. They paid this enormous mulct; but were kept out of their lands till restored by the long parliament.[1] In this proceeding Charles forgot his duty enough to take a

[1] Rushworth, iii. 123. Whitelock, p. 35. Strafford Letters, i. 374, et alibi. See what, Clarendon says, p. 293. (ii. 151. ed. 1826.) The second of these tells us, that the city offered, to build a palace for the king in St. James's park by way of composition, which was refused. If this be true, it must allude to the palace already projected by him, the magnificent designs for

very active share, personally exciting the court to give sentence for himself. (Strafford Letters, i. 340.) Is it then to be a matter of surprise or reproach, that the citizens of London refused him assistance in the Scottish war, and through the ensuing times of confusion harboured an implacable resentment against a sovereign who had so deeply injured them ?

We may advert in this place to some other stretches of power, which no one can pretend to justify, though in general they seem to have escaped notice amidst the enormous mass of national grievances. A commission was issued in 1635, to the recorder of London and others, to examine all persons going beyond seas, and tender to them an oath of the most inquisitorial nature. (Rymer, xix. 699.) Certain privy-councillors were empowered to enter the house of sir Robert Cotton, and search his books, records and papers, setting down such as ought to belong to the crown. (Id. 198.) This renders probable what we find in a writer who had the best means of information, that secretary Windebank, by virtue of an order of council, entered sir Edward Coke's house while he lay on his death-bed, took away his manuscripts, together with his last will, which was never returned to his family.[1] The high-commission court were enabled, by the king's "supreme power ecclesiastical," to examine such as were charged with offences cognisable by them on oath, which many had declined to take according to the known maxims of English law. (Rymer, xx. 190.)

It would be improper to notice as illegal or irregular the practice of granting dispensations in particular instances, either from general acts of parliament, or the local statutes of colleges. Such a prerogative, at least in the former case, was founded on long usage and judicial recognition. Charles, however, transgressed its admitted boundaries, when he empowered others to dispense with them as there might be occasion. Thus in a commission to the president and council of the North, directing them to compound with recusants, he in effect suspends the statute which provides that no recusant shall have a lease of that portion of his lands which the law sequestered to the king's use during his recusancy; a clause in this patent enabling the commissioners to grant such leases notwithstanding any law or statute to the contrary. This seems to go beyond the admitted limits of the dispensing prerogative. (Id. xix. 740. See also 82.)

The levies of tonnage and poundage without authority of parliament, the exaction of monopolies, the extension of the forests, the arbitrary restraints of proclamations, above all, the general exaction of ship-money, form the principal articles of charge against the government of Charles, so far as relates to its inroads on the subject's property. These were maintained by a vigilant and unsparing exercise of jurisdiction in the court of star-chamber. I have, in another chapter, traced the revival of this great tribunal, probably under Henry VIII., in at least as formidable a shape as before the now neglected statutes of Edward

which by Inigo Jones are well known. Had they been executed, the metropolis would have possessed a splendid monument of Palladian architecture; and the reproach sometimes thrown on England, of wanting a fit mansion for its monarchs, would have been prevented. But the exchequer of Charles I. had never been in such a state as to render it at all probable that he could undertake so costly a work.

[1] Roger Coke's Detection of the Court of England, i. 309. He was sir Edward's grandson.

III. and Richard II. which had placed barriers in its way. It was the great weapon of executive power under Elizabeth and James; nor can we reproach the present reign with innovation in this respect, though in no former period had the proceedings of this court been accompanied with so much violence and tyranny. But this will require some fuller explication.

I hardly need remind the reader, that the jurisdiction of the ancient concilium regis ordinarium, or court of star-chamber, continued to be exercised, more or less frequently, notwithstanding the various statutes enacted to repress it; and that it neither was supported by the act erecting a new court in the third of Henry VII., nor originated at that time. The records show the star-chamber to have taken cognisance both of civil suits and of offences throughout the time of the Tudors. But precedents of usurped power cannot establish a legal authority in defiance of the acknowledged law. It appears that the lawyers did not admit any jurisdiction in the council, except so far as the statute of Henry VII. was supposed to have given it. "The famous Plowden put his hand to a demurrer to a bill," says Hudson, "because the matter was not within the statute; and, although it was then overruled, yet Mr. Serjeant Richardson, thirty years after, fell again upon the same rock, and was sharply rebuked for it."[1] The chancellor, who was the standing president of the court of star-chamber, would always find pretences to elude the existing statutes, and justify the usurpation of this tribunal.

The civil jurisdiction claimed and exerted by the star-chamber was only in particular cases, as disputes between alien merchants and Englishmen, questions of prize or unlawful detention of ships, and in general such as now belong to the court of admiralty; some testamentary matters, in order to prevent appeals to Rome, which might have been brought from the ecclesiastical courts; suits between corporations, "of which," says Hudson, "I dare undertake to show above a hundred in the reigns of Henry VII. and Henry VIII., or sometimes between men of great power and interest, which could not be

[1] Hudson's Treatise of the Court of Star-chamber, p. 51. This valuable work, written about the end of James's reign, is published in Collectanea Juridica, vol. ii. There is more than one manuscript of it in the British Museum.

In another treatise, written by a clerk of the council about 1590. (Hargrave MSS. ccxvi. 195), the author says:—"There was a time when there grew a controversy between the star chamber and the king's bench for their jurisdiction in a cause of perjury concerning tithes, sir Nicholas Bacon, that most grave and worthy counsellor, then being lord-keeper of the great seal, and sir Robert Catlyn, knight, then lord chief-justice of the bench. To the deciding thereof were called by the plaintiff and defendant a great number of the learned counsellors of the law: they were called into the inner star-chamber after dinner, where before the lords of the council they argued the cause on both sides, but could not find the court of greater antiquity by all their books than Henry VII. and Richard III. On this I fell in cogitation how to find some further knowledge thereof." He proceeds to inform us, that by search into records he traced its jurisdiction much higher. This shows, however, the doubts entertained of its jurisdiction in the queen's time. This writer, extolling the court highly, admits that "some of late have deemed it to be new, and put the same in print, to the blemish of its beautiful antiquity" He then discusses the question, (for such it seems it was), whether any peer, though not of the council, might sit in the star-chamber; and decides in the negative. "Ao. 5to. of her majesty," he says in the case of the earl of Hertford, "there were assembled a great number of the noble barons of this realm, not being of the council, who offered there to sit; but at that time it was declared unto them by the lord-keeper that they were to give place; and so they did, and divers of them tarried the hearing of the cause at the bar."

This note ought to have been inserted in Chapter I., where the antiquity of the star-chamber is mentioned, but was accidentally overlooked.

tried with fairness by the common law. (P. 56.) For the corruption of sheriffs and juries furnished an apology for the irregular, but necessary, interference of a controlling authority. The ancient remedy, by means of attaint, which renders a jury responsible for an unjust verdict, was almost gone into disuse, and, depending on the integrity of a second jury, not always to be easy obtained; so that in many parts of the kingdom, and especially in Wales, it was impossible to find a jury who would return a verdict against a man of good family, either in a civil or criminal proceeding.

The statutes, however, restraining the council's jurisdiction, and the strong possession of the people as to the sacredness of freehold rights, made the star-chamber cautious of determining questions of inheritance, which they commonly remitted to the judges; and from the early part of Elizabeth's reign, they took a direct cognisance of any civil suits less frequently than before; partly, I suppose, from the increased business of the court of chancery, and the admiralty court, which took away much wherein they had been wont to meddle; partly from their own occupation as a court of criminal judicature, which became more conspicuous as the other went into disuse.[1] This criminal jurisdiction is that which rendered the star-chamber so potent and so odious an auxiliary of a despotic administration.

The offences principally cognisable in this court were forgery, perjury, riot, maintenance, fraud, libel, and conspiracy. (P. 82.) But besides these, every misdemeanour came within the proper scope of its inquiry; those especially of public importance, and for which the law, as then understood, had provided no sufficient punishment. For the judges interpreted the law in early times with too great narrowness and timidity; defects which, on the one hand, raised up the overruling authority of the court of chancery, as the necessary means of redress to the civil suitor who found the gates of justice barred against him by technical pedantry; and on the other, brought this usurpation and tyranny of the star-chamber upon the kingdom by an absurd scrupulosity about punishing manifest offences against the public good. Thus corruption, breach of trust, and malfeasance in public affairs, or attempts to commit felony, seem to have been reckoned not indictable at common law, and came in consequence under the cognisance of the star-chamber. (P. 108.) In other cases its jurisdiction was merely concurrent; but the greater certainty of conviction, and the greater severity of punishment, rendered it incomparably more formidable than the ordinary benches of justice. The law of libel grew up in this unwholesome atmosphere, and was moulded by the plastic hands of successive judges and attorneys-general. Prosecutions of this kind, according to Hudson, began to be more frequent from the last years of Elizabeth, when Coke was attorney-general; and it is easy to conjecture what kind of interpretation they received. To hear a libel sung or read, says that writer, and to laugh at it, and make merriment with it, has ever been held a publication in law. The gross error that

[1] P. 62. Lord Bacon observes, that the council in his time did not meddle with *meum* and *tuum* as formerly; and that such causes ought not to be entertained. V. i. 720.; v. ii. 208. "The king," he says, "should be sometimes present, yet not too often." James was too often present, and took one well-known criminal proceeding, that against sir Thomas Lake and his family, entirely into his own hands.

it is not a libel if it be true, has long since, he adds, been exploded out of this court. (P. 100. 102.)

Among the exertions of authority practised in this star-chamber, which no positive law could be brought to warrant, he enumerates "punishments of breach of proclamations before they have the strength of an act of parliament; which this court hath stretched as far as ever any act of parliament did. As, in the 41st of Elizabeth, builders of houses in London were sentenced, and their houses ordered to be pulled down, and the materials to be distributed to the benefit of the parish where the building was; which disposition of the goods soundeth as a great extremity, and beyond the warrant of our laws; and yet surely, very necessary, if any thing would deter men from that horrible mischief of increasing that head which is swollen to a great hugeness already."[1]

The mode of process was sometimes of a summary nature; the accused person being privately examined, and his examination read in the court, if he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or in certain cases, of a private relator. The party was brought before the court by writ of subpœna; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to the matters contained in the information, as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. The course of proceeding on the whole seems to have nearly resembled that of the chancery.[2]

It was held competent for the court to adjudge any punishment short of death. Fine and imprisonment were of course the most usual. The pillory, whipping, branding, and cutting off the ears, grew into use by degrees. In the reign of Henry VII. and Henry VIII., we are told by Hudson, the fines were not so ruinous as they have been since, which he ascribes to the number of bishops who sat in the court, and inclined to mercy; "and I can well remember," he says, "that the most reverend archbishop Whitgift did ever constantly maintain the liberty of the free charter, that men ought to be fined, salvo contenemento. But they have been of late imposed according to the nature of the offence, and not the estate of the person. The slavish punish-

[1] P. 107. The following case in the queen's reign goes a great way: An information was preferred in the star-chamber against Griffin and another for erecting a tenement in Hog-lane, which he divided into several rooms, wherein were inhabiting two poor tenants that only lived and were maintained by the relief of their neighbours, &c. The attorney-general and also the lord mayor and aldermen prayed some condign punishment on Griffin and the other, and that the court would be pleased to set down and decree some general order in this and other like cases of new building and division of tenements. Whereupon the court generally considering the great growing evils and inconveniences that continually breed and happen by this new erected building and divisions made and divided contrary to her majesty's said proclamation, commit the offenders to the Fleet, and fine them 20*l.* each; but considering that if the houses be pulled down, other habitations must be found, did not, as requested, order this to be done for the present, but that the tenants should continue for their lives without payment of rent, and the landlord is directed not to molest them, and after the death or departure of the tenants the houses to be pulled down. Harl. MSS. N. 299. fol. 7.

[2] Harl. MSS. p. 142., &c. It appears that the court of star-chamber could not sentence to punishment on the deposition of an eye-witness (Rushw. Abr. ii. 114.): a rule which did not prevent their receiving the most imperfect and inconclusive testimony.

ment of whipping," he proceeds to observe, "was not introduced till a great man of the common law, and otherwise a worthy justice, forgot his place of session, and brought it in this place too much in use."[1] It would be difficult to find precedents for the aggravated cruelties inflicted on Leighton, Lilburne, and others; but instances of cutting off the ears may be found under Elizabeth.[2]

The reproach, therefore, of arbitrary and illegal jurisdiction does not wholly fall on the government of Charles. They found themselves in possession of this almost unlimited authority. But doubtless, as far as the history of proceedings in the star-chamber is recorded, they seem much more numerous and violent in the present reign than in the two preceding. Rushworth has preserved a copious selection of cases determined before this tribunal. They consist principally of misdemeanours, rather of an aggravated nature; such as disturbances of the public peace, assaults accompanied with a good deal of violence, conspiracies, and libels. The necessity, however, for such a paramount court to restrain the excesses of powerful men no longer existed, since it can hardly be doubted that the common administration of the law was sufficient to give redress in the time of Charles the First; though we certainly do find several instances of violence and outrage by men of a superior station in life, which speak unfavourably for the state of manners in the kingdom. But the object of drawing so large a number of criminal cases into the Star-chamber seems to have been twofold: first, to inure men's minds to an authority more immediately connected with the crown than the ordinary courts of law, and less tied down to any rules of pleading or evidence: secondly, to eke out a scanty revenue by penalties and forfeitures. Absolutely regardless of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means, the councillors of the star-chamber inflicted such fines as no court of justice, in the present reduced value of money, would think of imposing. Little objection indeed seems to lie, in a free country, and with a well regulated administration of justice, against the imposition of weighty pecuniary penalties, due consideration being had to the offence and the criminal. But adjudged by such a tribunal as the star-chamber, where those who inflicted the punishment reaped the gain, and sat, like famished birds of prey, with keen eyes and bended talons, eager to supply for a moment, by some wretch's ruin, the craving emptiness of the exchequer, this scheme of enormous penalties became more dangerous and subversive of justice, though not more odious, than corporal punishment. A gentleman of the name of Allington was fined 12,000*l.* for marrying his niece. One who had sent a challenge to the earl of Northumberland was fined

[1] P. 36. 224. Instead of "the slavish punishment of whipping," the printed book has "the slavish speech of whispering," which of course entirely alters the sense, or rather makes nonsense. I have followed a MS. in the Museum (Hargrave, 250.), which agrees with the abstract of this treatise by Rushworth, ii. 348.

[2] Vallenger, author of seditious libels, was sentenced in the queen's reign to stand twice in the pillory, and lose both his ears. Harl. MSS. 6265., fol. 373. So also the conspirators who accused archbishop Sandys of adultery. Id. 376. And Mr. Pound, a Roman catholic gentleman, who had suffered much before for his religion, was sentenced by that court, in 1603, to lose both his ears, to be fined 1000*l.*, and imprisoned for life, unless he declare who instigated him to charge serjeant Philips with injustice in condemning a neighbour of his to death. Winwood, ii. 36.

5000*l.*; another for saying the earl of Suffolk was a base lord, 4000*l.* to him, and a like sum to the king. Sir David Forbes, for opprobrious words against lord Wentworth, incurred 5000*l.* to the king, and 3000*l.* to the party. On some soap-boilers, who had not complied with the requisitions of the newly incorporated company, mulcts were imposed of 1500*l.* and 1000*l.* One man was fined and set in the pillory for engrossing corn, though he only kept what grew on his own land, asking more in a season of dearth than the overseers of the poor thought proper to give.[1] Some arbitrary regulations with respect to prices may be excused by a well-intentioned, though mistaken, policy. The charges of inns and taverns were fixed by the judges. But even in those a corrupt motive was sometimes blended. The company of vintners, or victuallers, having refused to pay a demand of the lord treasurer, one penny a quart for all wine drank in their houses, the star-chamber, without information filed or defence made, interdicted them from selling or dressing victuals till they submitted to pay forty shillings for each tun of wine to the king.[2] It is evident that the strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof. From all that remains of proceedings in the star-chamber, they seem to have been very frequently as iniquitous as they were severe. In many celebrated instances, the accused party suffered less on the score of any imputed offence than for having provoked the malice of a powerful adversary, or for notorious dissatisfaction with the existing government. Thus Williams, bishop of Lincoln, once lord keeper, the favourite of king James, the possessor for a season of the power that was turned against him, experienced the rancorous and ungrateful malignity of Laud; who, having been brought forward by Williams into the favour of the court, not only supplanted by his intrigues, and incensed the king's mind against his benefactor, but harassed his retirement by repeated persecutions.[3] It will sufficiently illustrate the spirit of these times to mention that the sole offence imputed to the bishop of Lincoln in the last information against him in the star-chamber was, that he had received certain letters from one Osbaldiston, master of Westminster school, wherein some contemptuous nickname was used to denote Laud.[4] It did not appear that Williams had ever divulged these letters. But it was held that the concealment of a libellous letter was a high misdemeanour. Williams was therefore adjudged to pay 5000*l.* to the king, and 3000*l.* to the archbishop, to be imprisoned during pleasure, and to make a submission; Osbaldiston to pay a still heavier fine, to be deprived of all his benefices, to be imprisoned and make submission; and moreover to stand in the pillory before his school in Dean's-yard, with his ears nailed to it. This man had the good fortune to conceal himself;

[1] The scarcity must have been very great this season (1631), for he refused 2*l.* 18*s.* for the quarter of rye. Rushworth, ii. 110.

[2] Rushworth, ii. 340. Garrard, the correspondent of Wentworth, who sent him all London news, writes about this: "The attorney-general hath sent to all taverns to prohibit them to dress meat; somewhat was required of them, a halfpenny a quart for French wine, and a penny for sack and other richer wines for the king: the gentlemen vintners grew sullen, and would not give it, so they are all well enough served." Strafford Letters, i. 507.

[3] Hacket's Life of Williams. Rushworth, ii. 315. et post. Brodie, ii. 363.

[4] Osbaldiston swore that he did not mean Laud; an undoubted perjury.

but the bishop of Lincoln, refusing to make the required apology, lay above three years in the Tower, till released at the beginning of the long parliament.

It might detain me too long to dwell particularly on the punishments inflicted by the court of star-chamber in this reign. Such historians as have not written in order to palliate the tyranny of Charles, and especially Rushworth, will furnish abundant details, with all those circumstances that pourtray the barbarous and tyrannical spirit of those who composed that tribunal. Two or three instances are so celebrated that I cannot pass them over. Leighton, a Scots divine, having published an angry libel against the hierarchy, was sentenced to be publicly whipped at Westminster, and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, to have the whole of this repeated the next week at Cheapside, and to suffer perpetual imprisonment in the Fleet.[1] Lilburne, for dispersing pamphlets against the bishops, was whipped from the Fleet prison to Westminster, there set in the pillory, and treated afterwards with great cruelty. (Rushworth. State Trials.) Prynne, a lawyer of uncommon erudition, and a zealous puritan, had printed a bulky volume, called Histriomastix, full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this, he adverted to the appearance of courtesans on the Roman stage, and by a satirical reference in his index, seemed to range all female actors in the same class.[2] The queen unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at court. This passage was accordingly dragged to light by the malice of Peter Heylin, a chaplain of Laud, on whom the archbishop devolved the burthen of reading this heavy volume in order to detect its offences. Heylin, a bigoted enemy of every thing puritanical, and not scrupulous as to veracity, may be suspected of having aggravated, if not misrepresented, the tendency of a book much more tiresome than seditious. Prynne, however, was already obnoxious, and the star-chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of 5000*l.*, and to suffer perpetual imprisonment. The dogged puritan employed the leisure of a gaol in writing a fresh libel against the hierarchy. For this, with two other delinquents of the same class, Burton a divine, and Bastwick a physician, he stood again at the bar of that terrible tribunal. Their demeanour was what the court deemed intolerably

[1] Brodie (Hist. of Brit. Emp., ii. p. 309,) observes, that he cannot find in Leighton's book (which I have never seen) the passage constantly brought forward by Laud's apologists wherein he is supposed to have recommended the assassination of the bishops. He admits indeed, as does Harris, that the book was violent; but what can be said of the punishment?

[2] Id. Whitelocke, p. 18. Harris's Life of Charles, p. 262. The unfortunate words in the index, "Women actors notorious whores," cost Prynne half his ears; the remainder he saved by the hangman's mercy for a second harvest. When he was brought again before the star-chamber, some of the lords turned up his hair, and expressed great indignation that his ears had not been better cropped. State Trials, 717. The most brutal and servile of these courtiers seems to have been the earl of Dorset, though Clarendon speaks well of him. He was also impudently corrupt, declaring that he thought it no crime for a courtier, that lives at a great expense in his attendance, to receive a reward to get a business done by a great man in favour. Rushworth, ii. 246. It is to be observed, that the star-chamber tribunal was almost as infamous for its partiality and corruption as its cruelty. See proofs of this in the same work, p. 241.

contumacious, arising in fact from the despair of men who knew that no humiliation would procure them mercy.[1] Prynne lost the remainder of his ears in the pillory; and the punishment was inflicted on them all with extreme and designed cruelty, which they endured, as martyrs always endure suffering, so heroically as to excite a deep impression of sympathy and resentment in the assembled multitude.[2] They were sentenced to perpetual confinement in distant prisons. But their departure from London, and their reception on the road, were marked by signal expressions of popular regard; and their friends resorting to them even in Launceston, Chester, and Carnarvon castles, whither they were sent, an order of council was made to transport them to the isles of the Channel. It was the very first act of the long parliament to restore these victims of tyranny to their families. Punishments by mutilation, though not quite unknown to the English law, had been of rare occurrence; and thus inflicted on men whose station appeared to render the ignominy of whipping and branding more intolerable, they produced much the same effect as the still greater cruelties of Mary's reign, in exciting a detestation for that ecclesiastical dominion which protected itself by means so atrocious.

The person on whom public hatred chiefly fell, and who proved in a far more eminent degree than any other individual the evil genius of this unhappy sovereign, was Laud. His talents, though enabling him to acquire a large portion of theological learning, seem to have been hardly above mediocrity. There cannot be a more contemptible work than his Diary; and his letters to Strafford display some smartness, but no great capacity. He managed, indeed, his own defence, when impeached, with some ability; but on such occasions, ordinary men are apt to put forth a remarkable readiness and energy. Laud's inherent ambition had impelled him to court the favour of Buckingham, of Williams, and of both the kings under whom he lived, till he rose to the see of Canterbury on Abbot's death, in 1633. No one can deny that he was a generous patron of letters, and as warm in friendship as in enmity. But he had placed before his eyes the aggrandisement, first of the church, and next of the royal prerogative, as his end and aim in every action. Though not literally destitute of religion, it was so subordinate to worldly interest, and so blended in his mind with the impure alloy of temporal pride, that he became an intolerant persecutor of the puritan clergy, not from bigotry, which in its usual sense he never displayed, but systematic policy.[3] And being subject, as his friends call it, to some infirmities of temper, that is, choleric, vindictive, harsh, and even cruel to a great degree, he not only took a prominent

[1] The intimidation was so great, that no counsel dared to sign Prynne's plea; yet the court refused to receive it without such signature. Rushworth, ii. 277. Strafford Letters, ii. 74.

[2] Id. 85. Rushw. 295. State Trials. Clarendon, who speaks in a very unbecoming manner of this sentence, admits that it excited general disapprobation. P. 73.

[3] It is not easy to give Laud credit for much religion. In a prayer composed by him on the birth of the prince of Wales, in 1630, he says: "Double his father's graces, O Lord, upon him, *if it be possible.*" Brodie, ii. 358, from Hacket. Williams was scandalized at this "loathsome divinity," as he called it. His own sermon at king James's funeral, however, was pretty gross; though flattery of the dead is somewhat more pardonable than the living. In Laud's voluminous correspondence with Wentworth, we seek in vain, not for the sort of cant that distinguishes the age, but for what the letters of an eminent churchman might be expected to contain, some indications of a sense of duty towards God or man.

share in the severities of the Star-chamber, but, as his correspondence shows, perpetually lamented that he was restrained from going further lengths.[1]

Laud's extraordinary favour with the king, through which he became a prime adviser in matters of state, rendered him secretly obnoxious to most of the council, jealous, as ministers must always be, of a churchman's overweening ascendency. His faults, and even his virtues, contributed to this odium. For being exempt from the thirst of lucre, and though in the less mature state of his fortunes a subtle intriguer, having become frank through heat of temper and self-confidence, he discountenanced all schemes to serve the private interests of courtiers at the expense of his master's exhausted treasury, and went right onward to his object, the exaltation of the church and crown. He aggravated the invidiousness of his own situation, and gave an astonishing proof of his influence, by placing Juxon, bishop of London, a creature of his own, in the greatest of all posts, that of lord high-treasurer. Though Williams had lately been lord-keeper of the seal, it seemed more preposterous to place the treasurer's staff in the hands of a churchman, and of one so little distinguished even in his own profession, that the archbishop displayed his contempt of the rest of the council, especially Cottington, who aspired to it, by such a recommendation.[2] He had previously procured the office of secretary of state for Windebank. But though overawed by the king's infatuated partiality, the faction adverse to Laud were sometimes able to gratify

[1] Laud's character is justly and fairly drawn by May, neither in the coarse caricature style of Prynne, nor with the absurdly flattering pencil of Clarendon. "The archbishop of Canterbury was a main agent in this fatal work; a man vigilant enough, of an active or rather of a restless mind; more ambitious to undertake than politic to carry on; of a disposition too fierce and cruel for his coat; which notwithstanding he was so far from concealing in a subtle way, that he increased the envy of it by insolence. He had few vulgar and private vices, as being neither taxed of covetousness, intemperance, or incontinence; and in a word a man not altogether so bad in his personal character as unfit for the state of England." Hist. of Parliament, 19. But Laud would not have been a good man in private life.

[2] The following entry appears in Laud's Diary (Mar. 6. 1636): "Sunday, William Juxon, lord bishop of London, made lord high-treasurer of England: no churchman had it since Henry VII.'s time. I pray God bless him to carry it so that the church may have honour, and the king and the state service and contentment by it. And now, if the church will not hold themselves up under God, I can do no more."

Those who were far from puritanism could not digest this strange elevation. James Howell writes to Wentworth: "The news that keeps greatest noise here at this present, is that there is a new lord-treasurer; and it is news indeed, it being now twice time out of mind since the white robe and the white staff marched together; we begin to live here in the church triumphant; and there wants but one more to keep the king's conscience, which is more proper for a churchman than his coin, to make it a triumvirate." Straff. Letters, i. 522. Garrard, another correspondent, expresses his surprise, and thinks Strafford himself, or Cottington, would have done better, p. 523. And afterwards, v. ii. p. 2. "The clergy are so high here since the joining of the white sleeves with the white staff, that there is much talk of having as secretary a bishop, Dr. Wren, bishop of Norwich, and as chancellor of the exchequer, Dr. Bancroft, bishop of Oxford; but this comes only from the young fry of the clergy; little credit is given to it, but it is observed, they swarm mightily about the court." The tone of these letters shows that the writer suspected that Wentworth would not be well pleased at seeing a churchman set over his head. But in several of his own letters he positively declares his aversion to the office, and perhaps with sincerity. Ambition was less predominant in his mind than pride, and impatience of opposition. He knew, that as lord-treasurer he would be perpetually thwarted and undermined by Cottington and others of the council. They, on the other hand, must have dreaded that such a colleague might become their master. Laud himself, in his correspondence with Strafford, never throws out the least hint of a wish that he should succeed Weston, which would have interfered with his own views.

It must be added that Juxon redeemed the scandal of his appointment by an unblemished probity, and gave so little offence in this invidious greatness, that the long parliament never attacked him, and he remained in his palace at Fulham, without molestation till 1647.

their dislike, or to manifest their greater discretion, by opposing obstacles to his impetuous spirit.

Of these impediments, which a rash and ardent man calls lukewarmness, indolence, and timidity, he frequently complains in his correspondence with the lord-deputy of Ireland—that lord Wentworth, so much better known by the title of earl of Strafford, which he only obtained the year before his death, that we may give it him by anticipation, whose doubtful fame and memorable end have made him nearly the most conspicuous character of a reign so fertile in recollections. Strafford had in his early years sought those local dignities to which his ambition probably was at that time limited, the representation of the county of York, and the post of custos rotulorum, through the usual channel of court favour. Slighted by the duke of Buckingham, and mortified at the preference shown to the head of a rival family, sir John Saville, he began to quit the cautious and middle course he had pursued in parliament, and was reckoned among the opposers of the administration after the accession of Charles.[1] He was one of those who were made sheriffs of their counties, in order to exclude them from the parliament of 1626. This inspired so much resentment, that he signalised himself as a refuser of the arbitrary loan exacted the next year, and was committed in consequence to prison. He came to the third parliament with a determination to make the court sensible of his power, and possibly with some real zeal for the liberties of his country. But patriotism, unhappily, in his self-interested and ambitious mind, was the seed sown among thorns. He had never lost sight of his hopes from the court; even a temporary reconciliation with Buckingham had been effected in 1627, which the favourite's levity soon broke; and he kept up a close connexion with the treasurer Weston. Always jealous of a rival, he contracted a dislike for sir John Eliot, and might suspect that he was likely to be anticipated by that more distinguished patriot in royal favours.[2] The hour of Wentworth's glory was when Charles assented to the petition of right, in obtaining which, and in overcoming the king's chicane, and the hesitation of the lords, he had been pre-eminently conspicuous. From this moment he started aside from the path of true honour; and being suddenly elevated to the peerage and a great post, the presidency of the council

[1] Strafford's Letters, i. 33. &c. The letters of Wentworth in this period of his life show a good deal of ambition and resentment, but no great portion of public spirit. This collection of the Strafford letters forms a very important portion of our historical documents. Hume had looked at them very superficially, and quotes them but twice. They furnished materials to Harris and Macauley; but the first is little read at present, and the second not at all. In a recent and deservedly popular publication, Macdiarmid's Lives of British Statesmen, the work of a young man of letters, who did not live to struggle through the distresses of that profession, the character of Strafford is drawn from the best authorities, and with abundant, perhaps excessive, candour. Mr. Brodie, has well pointed out that he has obtained more credit for the early period of his parliamentary life than he deserves, by being confounded with Mr. Wentworth, member for Oxford, v. ii. p. 249. Rushworth has even ascribed to sir Thomas Wentworth the speeches of this Mr. Wentworth in the second parliament of Charles, from which it is notorious that the former had been excluded.

[2] Hacket tells us, in his elegant style, that "sir John Eliot of the west, and sir Thomas Wentworth of the north, both in the prime of their age and wits, both conspicuous for able speakers, clashed so often in the house, and cudgelled one another with such strong contradictions, that it grew from an emulation between them to an enmity. The lord-treasurer Weston picked out the northern cock, sir Thomas, to make him the king's creature, and set him upon the first step of his rising: which was wormwood in the taste of Eliot, who revenged himself upon the king in the bill of tonnage, and then fell upon the treasurer, and declaimed against

of the North, commenced a splendid but baleful career, that terminated at the scaffold.[1] After this fatal apostasy he not only lost all solicitude about those liberties which the petition of right had been designed to secure, but became their deadliest and most shameless enemy.

The council of the North was erected by Henry VIII. after the suppression of the great insurrection of 1536. It had a criminal jurisdiction in Yorkshire and the four more northern counties, as to riots, conspiracies, and acts of violence. It had also, by its original commission, a jurisdiction in civil suits, where either of the parties were too poor to bear the expenses of a process at common law; in which case the council might determine, as it seems, in a summary manner, and according to equity. But this latter authority had been held illegal by the judges under Elizabeth. (Fourth Inst. c. 49. See also 13 Reports, 31.) In fact, the lawfulness of this tribunal in any respect was, to say the least, highly problematical. It was regulated by instructions issued from time to time under the great seal. Wentworth spared no pains to enlarge the jurisdiction of his court. A commission issued in 1632, empowering the council of the North to hear and determine all offences, misdemeanours, suits, debates, controversies, demands, causes, things, and matters whatsoever therein contained, within certain precincts, namely, from the Humber to the Scots frontier. They were specially appointed to hear and determine divers offences, according to the course of the star-chamber, whether provided for by act of parliament or not; to hear complaints according to the rules of the court of chancery, and stay proceedings at common law by injunction; to attach persons by their serjeant in any part of the realm. (Rymer, xix. 9. Rushworth, ii. 127.)

These inordinate powers, the soliciting and procuring of which, especially by a person so well versed in the laws and constitution, appears to be of itself a sufficient ground for impeachment, were abused by Strafford to gratify his own pride, as well as to intimidate the opposers of arbitrary measures. Proofs of this occur in the prosecution of sir David Foulis, in that of Mr. Bellasis, in that of Mr. Maleverer, for the circumstances of which I refer the reader to more detailed history.[2]

Without resigning his presidency of the northern council, Wentworth was transplanted in 1633 to a still more extensive sphere, as lord-deputy of Ireland. This was the great scene on which he played his part; it was here that he found abundant scope for his commanding energy

him, that he was the author of all the evils under which the kingdom was oppressed." He proceeds to inform us, that bishop Williams offered to bring Eliot over, for which Wentworth never forgave him. Life of Williams, p. 82. The magnanimous fortitude of Eliot forbids us to give credit to any surmise unfavourable to his glory, upon such indifferent authority: but several passages in Wentworth's letters to Laud show his malice towards one who had perished in the great cause which he had so basely forsaken.

[1] Wentworth was brought over before the assassination of Buckingham. His patent in Rymer bears date 22nd July, 1628, a month previous to that event.

[2] Rushworth. Strafford's Trial, &c. Brodie, ii. 319. Straff. Letters, i. 145. In a letter to lord Doncaster, pressing for a severe sentence on Foulis, who had been guilty of some disrespect to himself as president of the North, Wentworth shows his abhorrence of liberty with all the bitterness of a renegado; and urges the "seasonable correcting an humour and liberty I find reign in these parts, of observing a superior command no farther than they like themselves, and of questioning any profit of the crown, called upon by his majesty's ministers, which might enable it to subsist of itself, without being necessitated to accept of such conditions, as others might easily think to impose upon it." Sept. 1632. Somers Tracts, iv. 198.

and imperious passions. The Richelieu of that island, he made it wealthier in the midst of exactions, and, one might almost say, happier in the midst of oppressions. He curbed subordinate tyranny; but his own left a sting behind it, that soon spread a deadly poison over Ireland. But of his merits and his injustice towards that nation I shall find a better occasion to speak. Two well-known instances of his despotic conduct in respect to single persons may just be mentioned; the deprivation and imprisonment of the lord chancellor Loftus for not obeying an order of the privy council to make such a settlement as they prescribed on his son's marriage—a stretch of interference with private concerns which was aggravated by the suspected familiarity of the lord-deputy with the lady who was to reap advantage from it;[1] and secondly, the sentence of death passed by a council of war on lord Mountnorris in Strafford's presence, and evidently at his instigation, on account of some very slight expressions which he had used in private society. Though it was never the deputy's intention to execute this judgment of his slaves, but to humiliate and trample upon Mountnorris, the violence and indecency of his conduct in it, his long persecution of the unfortunate prisoner after the sentence, and his glorying in the act at all times, and even on his own trial, are irrefragable proofs of such vindictive bitterness as ought, if there were nothing else, to prevent any good man from honouring his memory.[2]

The haughty and impetuous primate found a congenial spirit in the lord-deputy. They unbosom to each other, in their private letters, their ardent thirst to promote the king's service by measures of more energy than they were permitted to exercise. Do we think the administration of Charles during the interval of parliaments rash and violent? They tell us it was over-cautious and slow. Do we revolt from the severities of the star-chamber? To Laud and Strafford they seemed the feebleness of excessive lenity. Do we cast on the crown lawyers the reproach of having betrayed their country's liberties? We may find that, with their utmost servility, they fell far behind the expectations of the court, and their scruples were reckoned the chief shackles on the half-emancipated prerogative.

The system which Laud was longing to pursue in England, and which Strafford approved, is frequently hinted at by the word Thorough. "For the state," says he, "indeed, my lord, I am for Thorough; but I see that both thick and thin stays somebody, where I conceive it should

[1] Rushworth, iii. 85. Clarendon, i. 390. (1826). The original editors left out some words, which brought this home to Strafford. And if the case was as there seems every reason to believe, I would ask those who talk of this man's innocence, whether in any civilised country, a more outrageous piece of tyranny has been committed by a governor, than to compel a nobleman of the highest station to change the disposition of his private estate, because that governor carried on an adulterous intercourse with the daughter-in-law of the person whom he treated thus imperiously?

[2] Clarendon Papers, i. 449. 543. 594. Rushworth, iii. 43. Clar. Hist. i. 386. (1826). Strafford Letters, i. 497. et post. This proceeding against lord Mountnorris excited much dissatisfaction in England; those of the council who disliked Strafford making it a pretext to inveigh against his arrogance. But the king, invariably on the severe and arbitrary side, justified the measure, which silenced the courtiers: p. 512. Be it added, that the virtuous Charles took a bribe of 6000*l.* for bestowing Mountnorris's office on sir Adam Loftus, not out of distress through the parsimony of parliament, but to purchase an estate in Scotland (hear this, ye idolaters of his memory). Id. 511.

Hume, in extenuating the conduct of Strafford, as to Mountnorris's trial, says, that, "*sensible of the iniquity of the sentence*, he procured his majesty's free pardon to Mountnorris."

not, and it is impossible to go thorough alone." (Strafford Letters, v. III.) "I am very glad" (in another letter) "to read your lordship so resolute, and more to hear you affirm that the footing of them that go thorough for our master's service is not upon fee, as it hath been. But you are withal upon so many Ifs, that by their help you may preserve any man upon ice, be it never so slippery. As first, if the common lawyers may be contained within their ancient and sober bounds; if the word Thorough be not left out, as I am certain it is; if we grow not faint; if we ourselves be not in fault; if we come not to a peccatum ex te Israel; if others will do their parts as thoroughly as you promise for yourself, and justly conceive of me. Now I pray, with so many and such Ifs as these, what may not be done, and in a brave and noble way? But can you tell when these Ifs will meet, or be brought together? Howsoever I am resolved to go on steadily in the way, which you have formerly seen me go; so that (to put in one *if* too) if any thing fail in my hearty desires for the king and the church's service, the fault shall not be mine." (P. 155.) "As for my marginal note" (he writes in another place) "I see you deciphered it well" (they frequently corresponded in cipher), "and I see you make use of it too; do so still, thorough and thorough. Oh that I were where I might go so too! but I am shackled between delays and uncertainties; you have a great deal of honour here for your proceedings; go on a God's name." "I have done," he says some years afterwards, "with expecting of Thorough on this side."[1]

It is evident that the remissness of those with whom he was joined in the administration in not adopting or enforcing sufficiently energetic measures is the subject of the archbishop's complaint. Neither he nor Strafford loved the treasurer Weston, nor lord Cottington, both of whom had a considerable weight in the council. But it is more difficult to perceive in what respects the Thorough system was disregarded. He cannot allude to the church, which he absolutely governed through the high-commission court. The inadequate punishments, as he thought them, imposed on the refractory formed a part, but not the whole, of his grievance. It appears to me that the great aim of these two persons was to effect the subjugation of the common lawyers. Some sort of tenderness for those constitutional privileges, so indissolubly interwoven with the laws they administered, adhered to the judges, even while they made great sacrifices of their integrity at the instigation of the crown. In the case of habeas corpus, in that of ship-money, we find many of them display a kind of half-compliance, a reservation, a distinction, an anxiety to rest on precedents, which, though it did not save their credit with the public, impaired it at court. On some more fortunate occasions, as we have seen, they even manifested a good deal of firmness in resisting what was urged on them. Chiefly, however, in matter of prohibitions issuing from the ecclesiastical courts, they were

There is not the slightest evidence to warrant the words in italics; on the contrary, he always justified the sentence, and had most manifestly procured it. The king, in return to a moving petition of lady Mountmorris, permitted his release from confinement, "on making such a submission as my lord-deputy shall approve."

[1] Strafford Letters, p. 329. In other letters they complain of what they call the lady Mora, which seems to be a cant word for the inefficient system of the rest of the council, unless it is a personal nickname for Weston.

uniformly tenacious of their jurisdiction. Nothing could expose them more to Laud's ill-will. I should not deem it improbable that he had formed, or rather adopted from the canonists, a plan, not only of rendering the spiritual jurisdiction independent, but of extending it to all civil causes, unless perhaps in questions of freehold.[1]

The presumption of common lawyers, and the difficulties they threw in the way of the church and crown, are frequent themes with the two correspondents. "The church," says Laud, "is so bound up in the forms of the common law, that it is not possible for me or for any man to do that good which he would, or is bound to do. For your lordship sees, no man clearer, that they which have gotten so much power in and over the church will not let go their hold; they have indeed fangs with a witness, whatsoever I was once said in a passion to have." (P. 111.) Strafford replies: "I know no reason but you may as well rule the common lawyers in England as I, poor beagle, do here; and yet that I do, and will do, in all that concerns my master, at the peril of my head. I am confident that the king, being pleased to set himself in the business, is able, by his wisdom and ministers, to carry any just and honourable action through all imaginary opposition, for real there can be none; that to start aside for such panic fears, fantastic apparitions, as a Prynne or an Eliot shall set up, were the meanest folly in the whole world; that the debts of the crown being taken off, you may govern as you please; and most resolute I am that work may be done without borrowing any help forth of the king's lodgings, and that it is as downright a peccatum ex te Israel as ever was, if all this be not effected with speed and ease." (P. 173.) Strafford's indignation at the lawyers breaks out on other occasions. In writing to lord Cottington, he complains of a judge of assize who had refused to receive the king's instructions to the council of the North in evidence, and

[1] The bishops, before the Reformation, issued process from their courts in their own names. By the statute of 1 Edw. VI. c. 2. all ecclesiastical jurisdiction is declared to be immediately from the crown; and it is directed that persons exercising it shall use the king's arms in their seal, and no other. This was repealed under Mary; but her act is itself repealed by 1 Jac. I. c. 25. § 48. This seems to revive the act of Edward. The spiritual courts, however, continued to issue process in the bishop's name, and with his seal. On some difficulty being made concerning this, it was referred by the star-chamber to the twelve judges, who gave it under their hands that the statute of Edward was repealed, and that the practice of the ecclesiastical courts in this respect was agreeable to law. Neal, 589. Kennet, 92. Rush. Abr. iii. 340. Whitelock says, p. 22., that the bishops all denied that they held their jurisdiction from the king, for which they were liable to heavy penalties. This question is of little consequence; for it is still true that ecclesiastical jurisdiction, according to the law, emanates from the crown; nor does any thing turn on the issuing of process in the bishop's name, any more than on the holding courts-baron in the name of the lord. In Ireland, unless I am mistaken, the king's name is used in ecclesiastical proceedings. Laud, in his famous speech in the star-chamber, 1637, and again on his trial, asserts episcopal jurisdiction (except what is called in foro contentioso) to be of divine right; a doctrine not easily reconcilable with the crown's supremacy over *all* causes under the statute of Elizabeth; since any spiritual censure may be annulled by a lay tribunal, the commission of delegates; and how this can be compatible with a divine authority in the bishop to pronounce it, seems not easy to prove. Laud, I have no doubt, would have put an end to this badge of subordination to the crown. The judges in Cawdry's case, five Reports, held a very different language; nor would Elizabeth have borne this assumption of the prelates as tamely as Charles, in his poor-spirited bigotry, seems to have done. Stillingfleet, though he disputes at great length the doctrine of lord Coke, in his fifth Report, as to the extent of the royal supremacy before the first of Elizabeth, fully admits that since the statute of that year, the authority for keeping courts, in whose name soever they may be held, is derived from the king. Vol. iii. 768. 778.

This arrogant contempt of the lawyers manifested by Laud and his faction of priests led to the ruin of the great churchman, and of the church itself—by the hands, chiefly, of that powerful body they had insulted, as Clarendon has justly remarked.

beseeches that he may be charged with this great misdemeanour before the council-board. "I confess," he says, "I disdain to see the gownmen in this sort hang their noses over the flowers of the crown." (P. 129.) It was his endeavour in Ireland, as well as in Yorkshire, to obtain the right of determining civil suits. "I find," he says, "that my lord Falkland was restrained by proclamation not to meddle in any cause between party and party, which did certainly lessen his power extremely: I know very well the common lawyers will be passionately against it, who are wont to put such a prejudice upon all other professions, as if none were to be trusted or capable to administer justice but themselves; yet how well this suits with monarchy, when they monopolize all to be governed by their year-books, you in England have a costly experience; and I am sure his majesty's absolute power is not weaker in this kingdom, where hitherto the deputy and council-board have had a stroke with them." (P. 201. See also p. 223.) The king indulged him in this, with a restriction as to matters of inheritance.

The cruelties exercised on Prynne and his associates have generally been reckoned among the great reproaches of the primate. It has sometimes been insinuated that they were rather the act of other counsellors than his own. But his letters, as too often occurs, belie this charitable excuse. He expresses in them no sort of humane sentiment towards these unfortunate men, but the utmost indignation at the oscitancy of those in power, which connived at the public demonstrations of sympathy. "A little more quickness," he says, "in the government would cure this itch of libelling. But what can you think of Thorough when there shall be such slips in business of consequence? What say you to it, that Prynne and his fellows should be suffered to talk what they pleased while they stood in the pillory, and win acclamations from the people, &c.? By that which I have above written, your lordship will see that the Triumviri will be far enough from being kept dark. It is true, that when this business is spoken of, some men speak as your lordship writes, that it concerns the king and government more than me. But when any thing comes to be acted against them, be it but the execution of a sentence, in which lies the honour and safety of all justice, yet there is little or nothing done, nor shall I ever live to see it otherwise." (Vol. ii. p. 100.)

The lord-deputy fully concurred in this theory of vigorous government. They reasoned on such subjects as cardinal Granville and the duke of Alva had reasoned before them. "A prince," he says in answer, "that loseth the force and example of his punishments, loseth withal the greatest part of his dominion. If the eyes of the Triumviri be not sealed so close as they ought, they may perchance spy us out a shrewd turn, when we least expect it. I fear we are hugely mistaken, and misapply our charity thus pitying of them, where we should indeed much rather pity ourselves. It is strange indeed," he observes in another place, "to see the frenzy which possesseth the vulgar now-a-days, and that the just displeasure and chastisement of a state should produce greater estimation, nay reverence, to persons of no consideration either for life or learning, than the greatest and highest trust and employments shall be able to procure for others of unspotted conversation, of most eminent virtues and deepest knowledge: a grievous and

overspreading leprosy! but where you mention a remedy, sure it is not fitted for the hand of every physician; the cure under God must be wrought by one Æsculapius alone, and that in my weak judgment to be effected rather by corrosives than lenitives: less than Thorough will not overcome it; there is a cancerous malignity in it, which must be cut forth, which long since rejected all other means, and therefore to God and him I leave it." (Vol. iii. 136.)

The honourable reputation that Strafford had earned before his apostasy stood principally on two grounds; his refusal to comply with a requisition of money without consent of parliament, and his exertions in the petition of right, which declared every such exaction to be contrary to law. If any therefore be inclined to palliate his arbitrary proceedings and principles in the executive administration, his virtue will be brought to a test in the business of ship-money. If he shall be found to have given countenance and support to that measure, there must be an end of all pretence to integrity or patriotism. But of this there are decisive proofs. He not only made every exertion to enforce its payment in Yorkshire during the years 1639 and 1640, for which the peculiar dangers of that time might furnish some apology, but long before, in his correspondence with Laud, speaks thus of Mr. Hampden, deploring, it seems, the supineness that had permitted him to dispute the crown's claim with impunity. "Mr. Hampden is a great brother [i.e. a puritan], and the very genius of that people leads them always to oppose, as well civilly as ecclesiastically, all that ever authority ordains for them; but in good faith, were they right served, they should be whipt home into their right wits, and much beholden they should be to any one that would thoroughly take pains with them in that kind." (P. 138.) "In truth I still wish, and take it also to be a very charitable one, Mr. H. and others to his likeness were well whipt into their right senses; if that the rod be so used as that it smarts not, I am the more sorry." (P. 158.)

Hutton, one of the judges who had been against the crown in this case, having some small favour to ask of Strafford, takes occasion in his letter to enter on the subject of ship-money, mentioning his own opinion in such a manner as to give the least possible offence, and with all qualifications in favour of the crown; commending even lord Finch's argument on the other side. (P. 178.) The lord-deputy, answering his letter after much delay, says, "I must confess, in a business of so mighty importance, I shall the less regard the forms of pleading, and do conceive, as it seems my lord Finch pressed, that the power of levies of forces at sea and land for the very, not feigned, relief and safety of the public, is a property of sovereignty, as, were the crown willing, it could not divest it thereof: Salus populi suprema lex; nay, in cases of extremity, even above acts of parliament," &c.

It cannot be forgotten that the loan of 1626, for refusing which Wentworth had suffered imprisonment, had been demanded in a season of incomparably greater difficulty than that when ship-money was levied: at the one time war had been declared against both France and Spain, at the other the public tranquillity was hardly interrupted by some bickerings with Holland. In avowing therefore the king's right to levy money in cases of exigency, and to be the sole

judge of that exigency, he uttered a shameless condemnation of his former virtues. But lest any doubt should remain of his perfect alienation from all principles of limited monarchy, I shall produce still more conclusive proofs. He was strongly and wisely against the war with Spain, into which Charles's resentment at finding himself the dupe of that power in the business of the Palatinate nearly hurried him in 1637. At this time Strafford laid before the king a paper of considerations dissuading him from this course, and pointing out particularly his want of regular troops. (P. 60.) "It is plain, indeed," he says, "that the opinion delivered by the judges, declaring the lawfulness of the assessment for the shipping, is the greatest service that profession hath done the crown in my time. But unless his majesty hath the like power declared to raise a land army upon the same exigent of state, the crown seems to me to stand but upon one leg at home, to be considerable but by halves to foreign powers. Yet this sure methinks convinces a power for the sovereign to raise payments for land forces, and consequently submits to his wisdom and ordinance the transporting of the money or men into foreign states. Seeing then that this piece well fortified for ever vindicates the royalty at home from under the conditions and restraints of subjects, renders us also abroad even to the greatest kings the most considerable monarchy in Christendom; seeing again, this is a business to be attempted and won from the subject in time of peace only, and the people first accustomed to these levies, when they may be called upon, as by way of prevention for our future safety, and keep his majesty thereby also moderator of the peace of Christendom, rather than upon the bleeding evil of an instant and active war; I beseech you, what piety to alliances is there, that should divert a great and wise king forth of a path, which leads so manifestly, so directly, to the establishing his own throne, and the secure and independent seating of himself and posterity in wealth, strength, and glory, far above any their progenitors, verily in such a condition as there were no more hereafter to be wished them in this world, but that they would be very exact in their care for the just and moderate government of their people, which might minister back to them again the plenties and comforts of life, that they would be most searching and severe in punishing the oppressions and wrongs of their subjects, as well in the case of the public magistrate as of private persons, and lastly to be utterly resolved to exercise this power only for public and necessary uses; to spare them as much and often as were possible; and that they never be wantonly vitiated or misapplied to any private pleasure or person whatsoever? This being indeed the very only means to preserve, as may be said, the chastity of these levies, and to recommend their beauty so far forth to the subject, as being thus disposed, it is to be justly hoped, they will never grudge the parting with their monies. . . . .

"Perhaps it may be asked, where shall so great a sum be had? My answer is, procure it from the subjects of England, and profitably for them too. By this means preventing the raising upon them a land army for defence of the kingdom, which would be by many degrees more chargeable; and hereby also insensibly gain a precedent, and settle an authority and right in the crown to levies of that nature,

which thread draws after it many huge and great advantages, more proper to be thought on at some other seasons than now."

It is, however, remarkable that, with all Strafford's endeavours to render the king absolute, he did not intend to abolish the use of parliaments. This was apparently the aim of Charles; but, whether from remains of attachment to the ancient forms of liberty surviving amidst his hatred of the real essence, or from the knowledge that a well-governed parliament is the best engine for extracting money from the people, this able minister entertained very different views. He urged accordingly the convocation of one in Ireland, pledging himself for the experiment's success. And in a letter to a friend, after praising all that had been done in it, "Happy it were," he proceeds, "if we might live to see the like in England, every thing in its season; but in some cases it is as necessary there be a time to forget, as in others to learn; and howbeit the peccant (if I may without offence so term it) humour be not yet wholly purged forth, yet do I conceive it in the way, and that once rightly corrected and prepared, we may hope for a parliament of a sound constitution indeed; but this must be the work of time, and of his majesty's excellent wisdom; and this time it becomes us all to pray for and wait for, and when God sends it, to make the right use of it." (Vol. i. p. 420.)

These sentiments appear honourable and constitutional. But let it not be hastily conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise. A parliament was looked upon by him as a mere instrument of the prerogative. Hence he was strongly against permitting any mutual understanding among its members, by which they might form themselves into parties, and acquire strength and confidence by previous concert. "As for restraining any private meetings either before or during parliament, saving only publicly in the house, I fully rest in the same opinion, and shall be very watchful and attentive therein, as a means which may rid us of a great trouble, and prevent many stones of offence, which otherwise might by malignant spirits be cast in among us." (Strafford, p. 246.; see also p. 370.) And acting on this principle, he kept a watch on the Irish parliament, to prevent those intrigues which his experience in England had taught him to be the indispensable means of obtaining a control over the crown. Thus fettered and kept in awe, no one presuming to take a lead in debate from uncertainty of support, parliaments would have become such mockeries of their venerable name as the joint contempt of the court and nation must soon have annihilated. Yet so difficult is it to preserve this dominion over any representative body, that the king judged far more discreetly than Strafford in desiring to dispense entirely with their attendance.

The passages which I have thus largely quoted will, I trust, leave no doubt in any reader's mind that the earl of Strafford was party in a conspiracy to subvert the fundamental laws and liberties of his country. For here are not, as on his trial, accusations of words spoken in heat, uncertain as to proof, and of ambiguous interpretation; nor of actions variously reported and capable of some explanation: but the sincere unbosoming of the heart in letters never designed to come to light,

And if we reflect upon this man's cool-blooded apostasy on the first lure to his ambition, and on his splendid abilities which enhanced the guilt of that desertion, we must feel some indignation at those who have palliated all his iniquities, and even ennobled his memory with the attributes of patriot heroism. Great he surely was, since that epithet can never be denied without paradox to so much comprehension of mind, such ardour and energy, such courage and eloquence; those commanding qualities of soul, which, impressed upon his dark and stern countenance, struck his contemporaries with mingled awe and hate, and still live in the unfading colours of Vandyke.[1] But it may be reckoned as a sufficient ground for distrusting any one's attachment to the English constitution, that he reveres the name of the earl of Strafford.

It was perfectly consonant to Laud's temper and principles of government to extirpate, as far as in him lay, the lurking seeds of disaffection to the Anglican church. But the course he followed could in nature have no other tendency than to give them nourishment. His predecessor Abbot had, perhaps, connived to a limited extent at some irregularities of discipline in the puritanical clergy, judging not absurdly, that their scruples at a few ceremonies, which had been aggravated by a vexatious rigour, would die away by degrees, and yield to that centripetal force, that moral attraction towards uniformity and obedience to custom, which Providence has rendered one of the great preservatives of political society. His hatred to popery and zeal for Calvinism, which undoubtedly were narrow and intolerant, as well as his avowed disapprobation of those churchmen who preached up arbitrary power, gained for this prelate the favour of the party denominated puritan. In all these respects, no man could be more opposed to Abbot than his successor. Besides reviving the prosecutions for nonconformity in their utmost strictness, wherein many of the other bishops vied with their primate, he most injudiciously, not to say wickedly, endeavoured, by innovations of his own, and by exciting alarms in the susceptible consciences of pious men, to raise up new victims whom he might oppress. Those who made any difficulty about his novel ceremonies, or even who preached on the Calvinistic side, were harassed by the high commission court as if they had been actual schismatics.[2] The most obnoxious, if not the most indefensible of these prosecutions were for refusing to read what was called the Book of Sports; namely, a proclamation, or rather a renewal of that issued in the late reign, that certain feasts or wakes might be kept, and a great variety of pastimes used on Sundays after evening service.[3] This was reckoned, as

[1] The unfavourable physiognomy of Strafford is noticed by writers of that time. Somers Tracts, iv. 231. It did not prevent him from being admired by the fair sex, especially at his trial, where, May says, they were all on his side. The portraits by Vandyke at Wentworth and Petworth are well known; the latter appears eminently characteristic.

[2] See the cases of Workman, Peter Smart, &c., in the common histories: Rushworth, Rapin, Neal, Macauley, Brodie, and even Hume on one side; and for what can be said on the other, Collier, and Laud's own defence on his trial. A number of persons, doubtless inclining to the puritan side, had raised a sum of money to buy up impropriations, which they vested in trustees for the purpose of supporting lecturers; a class of ministers to whom Laud was very averse. He caused the parties to be summoned before the star-chamber, where their association was dissolved, and the impropriations already purchased were confiscated to the crown. Rushworth, ii. 17. Neal, i. 556.

[3] This originated in an order made at the Somerset assizes by chief justice Richardson, at

I have already observed, one of the tests of puritanism. But whatever superstition there might be in that party's judaical observance of the day they called the sabbath, it was in itself preposterous, and tyrannical in its intention, to enforce the reading in churches of this licence, or rather recommendation of festivity. The precise clergy refused in general to comply with the requisition, and were suspended or deprived in consequence. Thirty of them were excommunicated in the single diocese of Norwich; but as that part of England was rather conspicuously puritanical, and the bishop, one Wren, was the worst on the bench, it is highly probable that the general average fell short of that number.[1]

Besides the advantage of detecting a latent bias in the clergy, it is probable that the high church prelates had a politic end in the Book of Sports. The morose gloomy spirit of puritanism was naturally odious to the young and to men of joyous tempers. The comedies of that age are full of sneers at its formality. It was natural to think that, by enlisting the common propensities of mankind to amusement on the side of the established church, they might raise a diversion against that fanatical spirit, which can hardly long continue to be the prevailing temperament of a nation. The church of Rome, from which no ecclesiastical statesman would disdain to take a lesson, had for many ages perceived, and acted upon the principle, that it is the policy of governments to encourage a love of pastime and recreation in the people; both because it keeps them from speculating on religious and political matters, and because it renders them more cheerful and less sensible to the evils of their condition; and it may be remarked by the way, that the opposite system, so long pursued in this country, whether from a puritanical spirit, or from the wantonness of petty authority, has no such grounds of policy to recommend it. Thus much at least is certain, that when the puritan party employed their authority in proscribing all diversions, in enforcing all the Jewish rigour about the sabbath, and gave that repulsive air of austerity to the face of England of which so many singular illustrations are recorded, they rendered their yoke intolerable to the youthful and gay; nor did any other cause perhaps so materially contribute to bring about the Restoration. But mankind love sport as little as prayer by compulsion; and the immediate effect of the king's declaration was to produce a far more scrupulous abstinence from diversions on Sundays than had been practised before.

The resolution so evidently taken by the court, to admit of no half conformity in religion, especially after Laud had obtained an unlimited sway over the king's mind, convinced the puritans that England could

the request of the justices of peace, for suppressing these feasts, which had led to much disorder and profaneness. Laud made the privy council reprove the judge, and direct him to revoke the order. Kennet, p. 71. Rushw. ii. 165. Heylin says, the gentlemen of the county were against Richardson's order, which is one of his habitual falsehoods. See Rushw. ii. 167. I must add, however, that the proclamation was perfectly legal, and according to the spirit of the late act, 1 Car. I. c. 1. for the observance of the Lord's day. It has been rather misrepresented by those who have not attended to its limitations, as Neal and Brodie. Dr. Lingard, ix. 422., has stated the matter rightly.

[1] Neal, 569. Rushworth, ii. 166. Collier, 758. Heylin's Life of Laud, 241. 290. The last writer extenuates the persecution by Wren: but it is evident by his own account that no suspension or censure was taken off till the party conformed and read the declaration.

no longer afford them an asylum. The state of Europe was not such as to encourage their emigration, though many were well received in Holland. But, turning their eyes to the newly-discovered regions beyond the Atlantic Ocean, they saw a secure place of refuge from present tyranny, and a boundless prospect for future hope. They obtained from the crown the charter of Massachusetts Bay in 1529. About three hundred and fifty persons, chiefly or wholly of the independent sect, sailed with the first fleet. So many followed in the subsequent years, that these New England settlements have been supposed to have drawn near half a million of money from the mother country before the civil wars.[1] Men of a higher rank than the first colonists, and now become hopeless alike of the civil and religious liberties of England, men of capacious and commanding minds, formed to be the legislators and generals of an infant republic, the wise and cautious lord Saye, the acknowledged chief of the independent sect, the brave, open, and enthusiastic lord Brook, sir Arthur Haslerig, Hampden, ashamed of a country for whose rights he had fought alone, Cromwell, panting with energies that he could neither control nor explain, and whose unconquerable fire was still wrapt in smoke to every eye but that of his kinsman Hampden, were preparing to embark for America, when Laud, for his own and his master's curse, procured an order of council to stop their departure.[2] Besides the reflections which such an instance of destructive infatuation must suggest, there are two things not unworthy to be remarked: first, that these chiefs of the puritan sect, far from entertaining those schemes of overturning the government at home that have been imputed to them, looked only in 1638 to escape from imminent tyranny; and, secondly, that the views of the archbishop were not so much to render the church and crown secure from the attempts of disaffected men, as to gratify a malignant humour by persecuting them.

These severe proceedings of the court and hierarchy became more odious on account of their suspected leaning, or at least notorious indulgence, towards popery. With some fluctuations, according to circumstances or changes of influence in the council, the policy of Charles was to wink at the domestic exercise of the catholic religion, and to admit its professors to pay compositions for recusancy which were not regularly enforced.[3] The catholics willingly submitted to this mitigated rigour, in the sanguine expectation of far more prosper-

[1] Neal, p. 546. I do not know how he makes his computation.

[2] A proclamation, dated May 1. 1638, reciting that the king was informed that many persons went yearly to New England in order to be out of the reach of ecclesiastical authority, commands that no one shall pass without a licence, and a testimonial of conformity from the minister of his parish. Rymer. xx. 223. Laud, in a letter to Strafford, ii. 169., complains of men running to New England, when there was a want of them in Ireland. And why did they so, but that any trackless wilderness seemed better than his own or his friend's tyranny? In this letter he laments that he is left alone in the envious and thorny part of the work, and has no encouragement.

[3] In thirteen years, ending with 1640, but 4080*l.* was levied on recusants by process from the exchequer, according to Commons' Journals, 1 Dec. 1640. But it cannot be denied that they paid considerable sums by way of composition, though less probably than in former times. Lingard. ix. 424. &c. note G. Weston is said by Clarendon to have offended the catholics by enforcing penalties to raise the revenue. One priest only was executed for religion, before the meeting of the long parliament. Butler, iv. 97. And though, for the sake of appearance, proclamations for arresting priests and recusants sometimes came forth, they were always discharged in a short time. The number pardoned in the first sixteen years of the king is said

ous days. I shall, of course, not censure this part of his administration. Nor can we say that the connivance at the resort of catholics to the queen's chapel in Somerset House, though they used it with much ostentation, and so as to give excessive scandal, was any more than a just sense of toleration would have dictated. (Strafford Letters, i. 505. 524. ii. 2. 57.) Unfortunately, the prosecution of other sectaries renders it difficult to ascribe such a liberal principle to the council of Charles the First. It was evidently true, what the nation saw with alarm, that a proneness to favour the professors of this religion, and to a considerable degree the religion itself, was at the bottom of a conduct so inconsistent with their system of government. The king had been persuaded, in 1635, through the influence of the queen, and probably of Laud,[1] to receive privately as an accredited agent from the court of Rome, a secular priest, named Panzani, whose ostensible instructions were to effect a reconciliation of some violent differences that had long subsisted between the secular and regular clergy of his communion. The chief motive, however, of Charles was, as I believe, so far to conciliate the pope as to induce him to withdraw his opposition to the oath of allegiance, which had long placed the catholic laity in a very invidious condition, and widened a breach which his majesty had some hopes of closing. For this purpose he offered any reasonable explanation which might leave the oath free from the slightest appearance of infringing the papal supremacy. But it was not the policy of Rome to make any concession, or even enter into any treaty, that might tend to impair her temporal authority. It was better for her pride and ambition that the English catholics should continue to hew wood and draw water, their bodies the law's slaves, and their souls her own, than, by becoming the willing subjects of a protestant sovereign, that they should lose that sense of dependency and habitual deference to her commands in all worldly matters, which states wherein their faith stood established had ceased to display. She gave therefore no encouragement to the proposed explanations of the oath of allegiance, and even instructed her nuncio Con, who succeeded Panzani, to check the precipitance of the English catholics in contributing men and money towards the army raised against Scotland, in 1639.[2] There might indeed be some reasonable suspicion that the court did not play quite fairly with this body, and was more eager to extort what it could from their hopes than to make any substantial return.

The favour of the administration, as well as the antipathy that every

to have amounted, in twenty-nine counties only, to 11,970. Neal, 604. Clarendon, i. 261., confirms the systematic indulgence shown to catholics, which Dr. Lingard seems, reluctantly and by silence, to admit.

[1] Heylin, 286. The very day of Abbot's death, an offer of a cardinal's hat was made to Laud, as he tells us in his Diary, "by one that avowed ability to perform it." This was repeated some days afterwards: Aug. 4th and 17th, 1633. It seems very questionable whether this came from authority. The new primate made a strange answer to the first application, which might well encourage a second; certainly not what might have been expected from a steady protestant. If we did not read this in his own Diary, we should not believe it. The offer at least proves that he was supposed capable of acceding to it.

[2] Clarendon State Papers, ii. 44. It is always important to distinguish dates. By the year 1639, the court of Rome had seen the fallacy of those hopes she had previously been led to entertain, that the king and church of England would return to her fold. This might exasperate her against him, as it certainly did against Laud; besides which, I should suspect the influence of Spain in the conclave.

parliament had displayed towards them, not unnaturally rendered the catholics, for the most part, asserters of the king's arbitrary power.[1] This again increased the popular prejudice. But nothing excited so much alarm as the perpetual conversions to their faith. These had not been quite unusual in any age since the Reformation, though the balance had been very much inclined to the opposite side. They became under Charles the news of every day; protestant clergymen in several instances, but especially women of rank, becoming proselytes to a religion, so seductive to the timid reason and susceptible imagination of the sex. They whose minds have never strayed into the wilderness of doubt, vainly deride such as sought out the beaten path their fathers had trodden in old times; they whose temperament gives little play to the fancy and sentiment, want power to comprehend the charm of superstitious illusions, the satisfaction of the conscience in the performance of positive rites, especially with privation or suffering, the victorious self-gratulation of faith in its triumph over reason, the romantic tenderness that loves to rely on female protection, the graceful associations of devotion with all that the sense or the imagination can require,—the splendid vestment, the fragrant censer, the sweet sounds of choral harmony, and the sculptured form that an intense piety half endows with life. These springs were touched, as the variety of human character might require, by the skilful hands of Romish priests, chiefly jesuits, whose numbers in England were about 250,[2] concealed under a lay garb, and combining the courteous manners of gentlemen with a refined experience of mankind, and a logic in whose labyrinths the most practical reasoner was perplexed. Against these fascinating wiles the puritans opposed other weapons from the same armoury of human nature; they awakened the pride of reason, the stern obstinacy of dispute, the names, so soothing to the ear, of free inquiry and private judgment. They inspired an abhorrence of the adverse party that served as a barrier against insidious approaches. But far different principles actuated the prevailing party in the church of England. A change had for some years been wrought in its tenets, and still more in its sentiments, which, while it brought the whole body into a sort of approximation to Rome, made many individuals shoot as it were from their own sphere, on coming within the stronger attraction of another.

The charge of inclining towards popery brought by one of our religious parties against Laud and his colleagues with invidious exaggera-

[1] Proofs of this abound in the first volume of the collection just quoted, as well as in other books. The catholics were not indeed unanimous in the view they took of the king's prerogative which became of importance in the controversy as to the oath of allegiance; one party maintaining that the king had a right to put his own explanation on that oath, which was more to be regarded than the sense of parliament; while another denied that they could conscientiously admit the king's interpretation against what they knew to have been the intention of the legislature who imposed it. A Mr. Courtney, who had written on the latter side, was imprisoned in the Tower, on pretext of recusancy, but really for having promulgated so obnoxious an opinion. P. 258. et alibi. Memoirs of Panzani, p. 140. The jesuits were much against the oath, and, from whatever cause, threw all the obstacles they could in the way of a good understanding between the king and the pope. One reason was their apprehension that an article of the treaty would be the appointment of a catholic bishop in England; a matter about which the members of that church have been quarrelling ever since the reign of Elizabeth, but too trifling for our notice in this place. More than half Panzani's Memoirs relate to it.

[2] Memoirs of Panzani, p. 207. This is a statement by father Leander; in another place, p. 140., they are reckoned at 360. There were about 180 other regulars, and five or six hundred secular priests.

tion, has been too indignantly denied by another. Much indeed will depend on the definition of that obnoxious word; which one may restrain to an acknowledgment of the supremacy, in faith and discipline, of the Roman see; while another comprehends in it all those tenets which were rejected as corruptions of Christianity at the Reformation; and a third may extend it to the ceremonies and ecclesiastical observances which were set aside at the same time. In this last and most enlarged sense, which the vulgar naturally adopted, it is notorious that all the innovations of the school of Laud were so many approaches, in the exterior worship of the church, to the Roman model. Pictures were set up or repaired; the communion-table took the name of an altar; it was sometimes made of stone; obeisances were made to it; the crucifix was sometimes placed upon it; the dress of the officiating priests became more gaudy; churches were consecrated with strange and mystical pageantry.[1] These petty superstitions, which would of themselves have disgusted a nation accustomed to despise as well as abhor the pompous rites of the catholics, became more alarming from the evident bias of some leading churchmen to parts of the Romish theology. The doctrine of a real presence, distinguishable only by vagueness of definition from that of the church of Rome, was generally held.[2] Montagu, bishop of Chichester, already so conspicuous, and justly reckoned the chief of the Romanising faction, went a considerable length towards admitting the invocation of saints; prayers for the dead, which lead at once to the tenet of purgatory, were vindicated by many; in fact, there was hardly any distinctive opinion of the church of Rome, which had not its abettors among the bishops, or

[1] Kennet, 73. Harris's Life of Charles, 220. Collier, 772. Brodie, ii. 224. note. Neal, p. 572. &c Laud, in his defence at his trial, denies or extenuates some of the charges. There is however full proof of all that I have said in my text. The famous consecration of St. Catharine's Creed church in 1631 is mentioned by Rushworth, Welwood, and others. Laud said in his defence that he borrowed the ceremonies from Andrews, who had found them in some old liturgy; as if that rendered the superstition and absurdity a jot the less. The consecration of churches had, I believe, been disused since the Reformation. There seems a proper decency in this practice; but I cannot help regarding the consecration of burial-grounds as a miserable piece of superstition.

[2] In bishop Andrews's answer to Bellarmine, he says: Præsentiam credimus non minus quam vos veram; de modo præsentiæ nil temere definimus. And soon afterwards: Nobis vobiscum de objecto convenit, de modo lis omnis est. De hoc est, fide firmâ tenemus quod sit, sive de hoc modo est, ut sit Per, sive In, sive Cum, sive Sub, sive Trans, nullum mihi verbum est. I quote from Casaubon's Epistles, p. 393. This is, reduced to plain terms: We fully agree with you that Christ's body is actually present in the sacramental elements, in the same sense as you use the word; but we see no cause for determining the precise mode, whether by transubstantiation or otherwise.

The doctrine of the Church of England, as evidenced by its leading ecclesiastics, underwent a change in the reign of James, through Andrews, Casaubon, and others, who deferred wholly to antiquity. In fact, as I have elsewhere observed, there can be but two opinions, neglecting subordinate differences, on this famous controversy. It is clear to those who have attended to the subject, that the Anglican reformers did not hold a local presence of Christ's human body in the consecrated bread itself, independent of the communicant, or, as the technical phrase was, extra usum: and it is also clear, that the divines of the latter school did so. This question is rendered intricate at first sight partly by the strong figurative language which the early reformers employed in order to avoid shocking the prejudices of the people; and partly by the incautious and even absurd use of the word *real presence* to mean *real absence*; which is common with modern theologians. As the Romish controversy is reviving, I would take the liberty of hinting to our protestant combatants, that, having to deal with an adversary not scrupulous in citation, and particularly fond of the argumentum ad hominem, they will do well to throw overboard the writers of the seventeenth century, and not pretend to vindicate expressions, which do denote, and were meant to denote, tenets very different from their own. Let them rather imitate the candour and good sense of bishop Heber on this head. Life of Taylor, p. 232.

those who wrote under their patronage. The practice of auricular confession, which an aspiring clergy must so deeply regret, was frequently inculcated as a duty. And Laud gave just offence by a public declaration, that in the disposal of benefices he should, in equal degrees of merit, prefer single before married priests.[1] They incurred scarcely less odium by their dislike of the Calvinistic system, and by what ardent men construed into a dereliction of the protestant cause, a more reasonable and less dangerous theory on the nature and reward of human virtue, than that which the fanatical and presumptuous spirit of Luther had held forth as the most fundamental principle of his Reformation.

It must be confessed that these English theologians were less favourable to the papal supremacy, than to most other distinguishing tenets of the catholic church. Yet even this they were inclined to admit in a considerable degree, as a matter of positive, though not divine institution; content to make the doctrine and discipline of the fifth century the rule of their bastard reform. An extreme reverence for what they called the primitive church had been the source of their errors. The first reformers had paid little regard to that authority. But as learning by which was then meant an acquaintance with ecclesiastical antiquity grew more general in the church, it gradually inspired more respect for itself; and men's judgment in matters of religion came to be measured by the quantity of their erudition.[2] The sentence of the early writers, including the fifth and perhaps sixth centuries, if it did not pass for infallible, was of prodigious weight in controversy. No one in the English church seems to have contributed so much towards this relapse into superstition as Andrews, bishop of Winchester, a man of eminent learning in this kind, who may be reckoned the founder of the school wherein Laud was the most prominent disciple.[3]

A characteristic tenet of this party was, as I have already observed, that episcopal government was indispensably requisite to a Christian church.[4] Hence they treated the presbyterians with insolence abroad,

[1] Heylin's Life of Laud, p. 212. He probably imbibed this, like many other of his prejudices, from bishop Andrews, whose epitaph in Winchester Cathedral speaks of him as having received a superior reward in heaven on account of his celibacy: cœlebs migravit ad aureolam cœlestem. Aureola, a word of no classical authority, means in the style of popish divinity, which the author of this epitaph thought fit to employ, the crown of virginity. See Du Cange in voc.

[2] See Life of Hammond, in Wordsworth's Eccles. Biogy., vol. v. 343. It had been usual to study divinity in compendiums, chiefly drawn up in the sixteenth century. King James was a great favourer of antiquity, and prescribed the study of the fathers in his Instructions to the Universities, in 1616.

[3] Andrews gave scandal in the queen's reign by preaching at court, "that contrition, without confession and absolution and deeds worthy of repentance, was not sufficient; that the ministers had the two keys of power and knowledge delivered unto them; that whose sins soever they remitted upon earth, should be remitted in heaven.—The court is full of it, for such doctrine was not usually taught there." Sidney Letters, ii. 185. Harrington also censures him for an attempt to bring in auricular confession. Nugæ Antiquæ, ii. 192. In his own writings against Perron, he throws away a great part of what have always been considered the protestant doctrines.

[4] Hall, bishop of Exeter, a very considerable person, wrote a treatise on the Divine Institution of Episcopacy, which, according to an analysis given by Heylin and others of its leading positions, is so much in the teeth of Hooker's Ecclesiastical Polity, that it might pass for an answer to it. Yet it did not quite come up to the primate's standard, who made him alter some passages which looked too like concessions. Heylin's Life of Laud, 374. Collier. 789. One of his offences was the asserting the pope to be Antichrist, which displeased the king as well as primate, though it had been orthodox under James.

and severity at home. A brief to be read in churches for the sufferers in the Palatinate having been prepared, wherein they were said to profess the same religion as ourselves, Laud insisted on this being struck out. (Collier, 764. Neal, 582. Heylin, 288.) The Dutch and Walloon churches in England, which had subsisted since the Reformation, and which various motives of policy had led Elizabeth to protect, were harassed by the primate and other bishops for their want of conformity to the Anglican ritual. (Collier, 753. Heylin, 260.) The English ambassador, instead of frequenting the Hugonot church at Charenton, as had been the former practice, was instructed to disclaim all fraternity with their sect, and set up in his own chapel the obnoxious altar and the other innovations of the hierarchy.[1] These impolitic and insolent proceedings gave the foreign protestants a hatred of Charles, which they retained through all his misfortunes.

This alienation from the foreign churches of the reformed persuasion had scarcely so important an effect in begetting a predilection for that of Rome, as the language frequently held about the Anglican separation. It became usual for our churchmen to lament the precipitancy with which the Reformation had been conducted, and to inveigh against its principal instruments. The catholic writers had long descanted on the lust and violence of Henry, the pretended licentiousness of Anne Boleyn, the rapacity of Cromwell, the pliancy of Cranmer; sometimes with great truth, but with much of invidious misrepresentation. These topics, which have no kind of operation on men accustomed to sound reasoning, produce an unfailing effect on ordinary minds. Nothing incurred more censure than the dissolution of the monastic orders, or at least the alienation of their endowments; acts accompanied, as we must all admit, with great rapacity and injustice, but which the new school branded with the name of sacrilege. Spelman, an antiquary of eminent learning, was led by bigotry or subserviency to compose a wretched tract called the History of Sacrilege, with a view to confirm the vulgar superstition that the possession of estates alienated from the church entailed a sure curse on the usurper's posterity. There is some reason to suspect that the king entertained a project of restoring all impropriated hereditaments to the church.

It is alleged by one who had much access to Laud, that his object in

[1] Clarendon, iii. 366. State Papers, i. 338. "Lord Scudamore, the English ambassador, set up an altar, &c. in the Laudean style. His successor, lord Leicester, spoke to the archbishop about going to Charenton; and telling him lord Scudamore did never go thither, Laud answered, 'He is the wiser.' Leicester requested his advice what he should do in order to sift his disposition, being himself resolved how to behave in that matter. But the other would only say that he left it to his discretion. Leicester says, he had many reasons to think that for his going to Charenton the archbishop did him all the ill offices he could to the king, representing him as a puritan, and consequently in his method an enemy to monarchical government, though he had not been very kind before. The said archbishop, he adds, would not countenance Blondel's book against the usurped power of the pope." Blencowe's Sydney Papers, 261.

"To think well of the reformed religion," says Northumberland, in 1640, "is enough to make the archbishop an enemy; and though he cannot for shame do it in public, yet in private he will do Leicester all the mischief he can." Collins's Sydney Papers, ii. 623.

Such was the opinion entertained of Laud, by those who could not reasonably be called puritans, except by such as made that word a synonym for protestant. It would be easy to add other proofs. The prosecution in the star-chamber against Sherfield, recorder of Salisbury, for destroying some superstitious pictures in a church, led to a display of the aversion many of the council entertained for popery, and their jealousy of the archbishop's bias. They were with difficulty brought to condemn Sherfield, and passed a sentence at last very unlike those to which they were accustomed. Rushworth. State Trials. Hume misrepresents the case.

these accommodations was to draw over the more moderate catholics to the English church, by extenuating the differences of her faith, and rendering her worship more palatable to their prejudices. (Heylin's Life of Laud, 390). There was, however, good reason to suspect, from the same writer's account, that some leading ecclesiastics entertained schemes of a complete re-union;[1] and later discoveries have abundantly confirmed this suspicion. Such schemes have doubtless been in the minds of men not inclined to offer every sacrifice; and during this very period Grotius was exerting his talents (whether judiciously or otherwise we need not inquire) to make some sort of reconciliation and compromise appear practicable. But we now know that the views of a party in the English church were much more extensive, and went almost to an entire dereliction of the protestant doctrine.

The catholics did not fail to anticipate the most favourable consequences from this turn in the church. The Clarendon State Papers, and many other documents, contain remarkable proofs of their sanguine and not unreasonable hopes. Weston the lord treasurer, and Cottington, were already in secret of their persuasion; though the former did not take much pains to promote their interests. No one, however, showed them such decided favour as secretary Windebank, through whose hands a correspondence was carried on with the court of Rome by some of its agents.[2] They exult in the peaceful and flourishing state of their religion in England as compared with former times. The recusants, they write, were not molested; and if their compositions were enforced, it was rather from the king's want of money, than any desire to injure their religion. Their rites were freely exercised in the queen's chapel and those of ambassadors, and, more privately, in the houses of the rich. The church of England was no longer exasperated against them; if there was ever any prosecution, it was to screen the king from the reproach of the puritans. They drew a flattering picture of the resipiscence of the Anglican party; who are come to acknowledge the truth in some articles, and differ in others rather verbally than in substance, or in points not fundamental; who hold all other protestants to be schismatical, and confess the primacy of the holy see, regretting the separation already made, and wishing for re-union: who profess to pay implicit respect to the fathers, and can best be assailed on that side. (Id. 197, &c.)

These letters contain, no doubt, a partial representation; that is, they impute to the Anglican clergy in general, what was only true of a certain number. Their aim was to inspire the court of Rome with more favourable views of that of England, and thus to pave the way for a permission of the oath of allegiance, at least with some modification of its terms. Such flattering tales naturally excited the hopes of the Vatican, and contributed to the mission of Panzani, who was

[1] Heylin's Life of Laud, 388. The passage is very remarkable, but too long to be extracted in a work not directly ecclesiastical. It is rather ambiguous; but the Memoirs of Panzani afford the key.

The Spanish ambassador applies to Windebank, 1633, to have a case of books restored, that had been carried from the custom-house to archbishop Abbot.—"Now he is dead, I make this demand upon his effects and library, that they may be restored to me; as his majesty's order at that time was ineffectual, as well as its appearing that there was nothing contraband or prohibited." A list of these books follows, and is curious. They consisted of English popish tracts by wholesale, intended, of course, for circulation. Clar. State Papers, 66.

instructed to feel the pulse of the nation, and communicate more unbiassed information to his court than could be expected from the English priests. He confirmed, by his letters, the general truth of the former statements, as to the tendency of the Anglican church, and the favourable dispositions of the court. The king received him secretly, but with much courtesy; the queen and the catholic ministers, Cottington and Windebank, with unreserved confidence. It required all the adroitness of an Italian emissary from the subtlest of courts to meet their demonstrations of friendship without too much committing his employers. Nor did Panzani altogether satisfy the pope, or at least his minister, cardinal Barberini, in this respect.[1]

During the residence of Panzani in England, an extraordinary negotiation was commenced for the reconciliation of the church of England with that of Rome; and, as this fact, though unquestionable, is very little known, I may not be thought to digress in taking particular notice of it. Windebank and lord Cottington were the first movers in that business; both calling themselves to Panzani catholics, as in fact they were, but claiming all those concessions from the see of Rome, which

[1] Clarendon State Papers, 249. The Memoirs of Panzani, after furnishing some materials to Dodd's Church History, were published by Mr. Berington, in 1794. They are, however, become scarce, and have not been much quoted. It is plain that they were not his own work, but written by some dependant, or person in his confidence. Their truth, as well as authenticity, appears to be quite beyond controversy; they coincide, in a remarkable manner, with all our other information; the names and local details are particularly accurate for the work of a foreigner; in short, they contain no one fact of any consequence which there is reason to distrust. Some account of them may be found in Butler's Engl. Cath. v. iv.

A small tract, entitled "The Pope's Nuncio," printed in 1643, and said to be founded on the information of the Venetian ambassador, is, as I conceive, derived in some direct or indirect manner from these Memoirs. It is republished in the Somers Tracts, v. iv.

Mr. Butler has published, for the first time, a long and important extract from Panzani's own report to the pope concerning the state of the catholic religion in England. Mem. of Catholics, iv. 55. He reckons them at 150,000; (thus vanishes the majority of Mr. Butler and Dr. Lingard) many of them, however, continuing so outwardly to live, as not to be known for such among whom are many of the first nobility. From them the neighbouring catholics have no means of hearing mass or going to the sacraments. Others, more bold, give opportunity, more or less, to their poorer neighbours to practice their duty. Besides these, there are others, who, apprehensive of losing their property or places, live in appearance as protestants, take the oaths of supremacy and allegiance, frequent the churches, and speak occasionally against catholics; yet in their hearts are such, and sometimes keep priests in their houses, that they may not be without help, if necessary. Among them he includes some of the first nobility, secular and ecclesiastical, and many of every rank. While he was in London, almost all the nobility who died, though reputed protestants, died catholics. The bishops are protestants, except four, Durham, Salisbury, Rochester, and Oxford, who are puritans. The latter are most numerous among the people, and are more hated by moderate protestants than are the catholics. A great change is apparent in books and sermons, compared with former times; auricular confession praised, images well spoken of, and altars. The pope is owned as patriarch of the West; and wishes are expressed for a re-union. The queen has a public chapel besides her private one, where service is celebrated with much pomp; also the ambassadors; and there are others in London. The laws against recusants are much relaxed; though sometimes the king, being in want of money, takes one third of their incomes by way of composition. The catholics are yet molested by the pursuivants, who enter their houses in search of priests, or sacred vessels; and though this evil was not much felt while he was in London, they might be set at work at any time. He determined therefore to obtain, if possible, a general order from the king to restrain the pursuivants; and the business was put into the hands of some counsellors, but not settled at his departure. The oath of allegiance divided the ecclesiastics, the major part refusing to take it. After a good deal about the appointment of a catholic bishop in England, he mentions father Davenport or Sancta Clara's book, entitled Deus, Natura, Gratia, with which the king, he says, had been pleased, and was therefore disappointed at finding it put in the Index Expurgatorius at Rome,—This book, which made much noise at the time, was an attempt to show the compatibility of the Anglican doctrines with those of the catholic church; the usual trick of popish intriguers. See an abstract of it in Stillingfleet's Works, vol. v. p. 176.

had been sometimes held out in the preceding century. Bishop Montagu soon made himself a party, and had several interviews with Panzani. He professed the strongest desire for a union, and added, that he was satisfied both the archbishops, the bishop of London, and several others of that order, besides many of the inferior clergy, were prepared to acknowledge the spiritual supremacy of the holy see; there being no method of ending controversies but by recurring to some centre of ecclesiastical unity. For himself, he knew no tenet of the Roman church to which he would not subscribe, unless it were that of transubstantiation, though he had some scruples as to communion in one kind. But a congress of moderate and learned men, chosen on each side, might reduce the disputed points into small compass, and confer upon them.

This overture being communicated to Rome by its agent, was, of course, too tempting to be disregarded, though too ambiguous to be snatched at. The re-union of England to the catholic church, in itself a most important advantage, might, at that particular juncture, during the dubious struggle of the protestant religion in Germany, and its still more precarious condition in France, very probably reduce its adherents throughout Europe to a proscribed and persecuted sect. Panzani was therefore instructed to flatter Montagu's vanity, to manifest a great desire for reconciliation, but not to favour any discussion of controverted points, which had always proved fruitless, and which could not be admitted, till the supreme authority of the holy see was recognised. As to all usages founded on positive law, which might be disagreeable to the English nation, they should receive as much mitigation as the case would bear. This, of course, alluded to the three great points of discipline, or ecclesiastical institution—the celibacy of the clergy, the exclusion of the laity from the eucharistical cup, and the Latin liturgy.

In the course of the bishop's subsequent interviews, he again mentioned his willingness to acknowledge the pope's supremacy; and assured Panzani, that the archbishop was entirely of his mind, but with a great mixture of fear and caution.[1] Three bishops only, Morton, Hall, and Davenant, were obstinately bent against the church of Rome; the rest might be counted moderate.[2] The agent, however, took care to obtain from another quarter a more particular account of each bishop's disposition, and transmitted to Rome a report, which does not appear. Montagu displayed a most unguarded warmth in all this treaty; notwithstanding which, Panzani suspected him of still entertaining some notions incompatible with the catholic doctrine. He behaved with

[1] If we may believe Heylin, the queen prevailed on Laud to use his influence with the king that Panzani might come to London, promising to be his friend. Life of Laud, 286.

[2] P. 246. It may seem extraordinary that he did not mention Williams; but I presume he took that political bishop's zeal to be insincere. Williams had been, while in power, a great favourer of the toleration of papists. If, indeed, a story told of him, on Endymion Porter's authority, in a late work, be true, he was at that time sufficiently inclined to have accepted a cardinal's hat, and made interest for it. Blencowe's Sydney Papers, p. 262. One bishop, Goodman of Gloucester, was undoubtedly a Roman Catholic, and died in that communion. He refused, for a long time, to subscribe the canons of 1640, on account of one that contained a renunciation of popery; but yielded at length for fear of suspension, and charged Montagu with having instigated his refusal, though he subscribed himself. Nalson, i. 371. Rushw Abr. iii. 168. Collier, 793. Laud's defence on his trial

much greater discretion than the bishop; justly, I suppose, distrusting the influence of a man who showed so little capacity for a business of the utmost delicacy. It appears almost certain, that Montagu made too free with the name of the archbishop, and probably of many others: and it is well worthy of remark, that the popish party did not entertain any sanguine hopes of the king's conversion. They expected, doubtless that by gaining over the hierarchy, they should induce him to follow; but he had evidently given no reason to imagine that he would precede. A few casual words, not perhaps exactly reported, might sometimes elate their hopes, but cannot excite in us, who are better able to judge than his contemporaries, any reasonable suspicion of his constancy. Yet it is not impossible that he might at one time conceive a union to be more practicable than it really was.[1]

The court of Rome, however, omitted no token of civility or good will to conciliate our king's favour. Besides expressions of paternal kindness which Urban lavished on him, cardinal Barberini gratified his well-known taste by a present of pictures. Charles showed a due sense of these courtesies. The prosecutions of recusants were absolutely stopped, by cashiering the pursuivants who had been employed in the odious office of detecting them. It was arranged that reciprocal diplomatic relations should be established, and consequently that an English agent should constantly reside at the court of Rome, by the nominal appointment of the queen, but empowered to conduct the various negotiations in hand. Through the first person who held this station, a gentleman of the name of Hamilton, the king made an overture on a matter very near to his heart, the restitution of the Palatinate. I have no doubt that the whole of his imprudent tampering with Rome had been considerably influenced by this chimerical hope. But it was apparent to every man of less unsound judgment than Charles, that except the young elector would renounce the protestant faith, he could expect nothing from the intercession of the pope.

After the first preliminaries, which she could not refuse to enter upon, the court of Rome displayed no eagerness for a treaty which it found, on more exact information, to be embarrassed with greater difficulties than its new allies had confessed.[2] Whether this subject

[1] Henrietta Maria, in her communication to Madame de Motteville, has the following passage, which is not undeserving of notice, though she may have been deceived:—"Le Roi Jacques . . . composa deux livres pour la défense de la fausse religion d'Angleterre, et fit réponse à ceux que le cardinal du Perron écrivit contre lui. En défendant le mensonge, il conçut de l'amour pour la vérité, et souhaita de se retirer de l'erreur. Ce fut en voulant accorder les deux religions, la nôtre et la sienne; mais il mourut avant que d'exécuter ce louable dessein. Le Roi Charles Stuard, son fils, quand il vint à la couronne, se trouva presque dans les mêmes sentimens. Il avoit auprès de lui l'archevêque de Cantorberi, qui, dans son cœur étant très-bon catholique, inspira au roi son maître un grand désir de rétablir la liturgie, croyant que s'il pouvoit arriver à ce point, il y auroit si peu de différence de la foi orthodoxe à la leur, qu'il seroit aisé peu à peu d'y-conduire le roi. Pour travailler à ce grand ouvrage, que ne paroissoit au roi d'Angleterre que le retablissement parfait de la liturgie, et qui est le seul dessein qui ait été dans le cœur de ce prince, l'archevêque de Cantorberi lui conseilla de commencer par l'Ecosse, comme plus éloignée du cœur du royaume; lui disant, que leur remuement seroit moins à craindre. Le roi, avant que de partir, voulant envoyer cette liturgie en l'Ecosse, l'apporta un soir dans la chambre de la reine, et la pria de lire ce livre, lui disant, qu'il seroit bien aise qu'elle le vît, afin qu'elle sût combien ils approchoient de créance." Mém. de Motteville, i. 242. A well-informed writer, however, says Charles was a protestant, and never liked the catholic religion. P. Orleans, Révolut. d'Anglet. iii. 35. He says the same of Laud, but refers to Vittorio Siri for an opposite story.

[2] Cardinal Barberini wrote word to Panzani, that the proposal of Windebank, that the

continued to be discussed during the mission of Con, who succeeded Panzani, is hard to determine; because the latter's memoirs, our unquestionable authority for what has been above related, cease to afford us light. But as Con was a very active intriguer for his court, it is by no means unlikely that he proceeded in the same kind of parley with Montagu and Windebank. Yet whatever might pass between them was intended rather with a view to the general interests of the Roman church, than to promote a reconciliation with that of England, as a separate contracting party. The former has displayed so systematic a policy to make no concession to the reformers, either in matters of belief, wherein, in fact, since the council of Trent, she could do nothing, or even, as far as possible, in points of discipline, as to which she judged, perhaps rightly, that her authority would be impaired by the precedent of concession without any proportionate advantage: so unvarying in all cases has been her determination to yield nothing except through absolute force, and to elude force itself by every subtlety, that it is astonishing how honest men on the opposite side (men, that is, who seriously intended to preserve any portion of their avowed tenets, not such as Montagu or Heylin) could ever contemplate the possibility of reconciliation. Upon the present occasion, she manifested some alarm at the boasted approximation of the Anglicans. The attraction of bodies is reciprocal; and the English catholics might, with so much temporal interest in the scale, be impelled more rapidly towards the established church than that church towards them. "Advise the clergy," say the instructions to the nuncio in 1639, "to desist from that foolish, nay rather illiterate and childish custom of distinction in the protestant and puritan doctrine; and especially this error is so much the greater, when they undertake to prove that protestantism is a degree nearer to the catholic faith than the other. For since both of them be without the verge of the church, it is needless hypocrisy to speak of it, yea, it begets more malice than it is worth."[1]

This exceeding boldness of the catholic party, and their success in conversions, which were in fact less remarkable for their number than for the condition of the persons, roused the primate himself to some apprehension. He preferred a formal complaint to the king in council against the resort of papists to the queen's chapel, and the insolence of some active zealots about the court.[2] Henrietta, who had courted his friendship, and probably relied on his connivance, if not support, seems never to have forgiven this unexpected attack. Laud gave another

church of Rome should sacrifice communion in one kind, the celibacy of the clergy, &c., would never please; that the English ought to look back on the breach they had made, and their motives for it, and that the whole world was against them on the first-mentioned points, p. 173. This is exactly what any one might predict, who knew the long discussions on the subject with Austria and France at the time of the council of Trent.

[1] "Begets more malice" is obscure—perhaps it means "irritates the puritans more." Clarendon Papers, ii. 44.

[2] Heylin, p. 338. Laud's Diary, Oct. 1637. Strafford Letters, i. 426. Garrard, a dependent friend whom Strafford retained, as was usual with great men, to communicate the news of the court, frequently descants on the excessive boldness of the papists. "Laud," he says, vol. ii. p. 74., "does all he can to beat down the general fear conceived of bringing on popery." So in p. 165. and many other places.

It is manifest, by a letter of Laud to Strafford in 1638, that he was not satisfied with the systematic connivance at recusancy. Id. 171. The explanation of the archbishop's conduct with respect to the Roman catholics seems to be, that with a view of gaining them over to his

testimony of his unabated hostility to popery by republishing with additions his celebrated conference with the jesuit Fisher, a work reckoned the great monument of his learning and controversial acumen. This conference had taken place many years before, at the desire and in the presence of the countess of Buckingham, the duke's mother. Those who are conversant with literary and ecclesiastical anecdote must be aware, that nothing was more usual in the seventeenth century than such single combats under the eye of some fair lady, whose religious faith was to depend upon the victory. The wily and polished jesuits had great advantages in these duels, which almost always, I believe, ended in their favour. After fatiguing their gentle arbitress for a time with the tedious fencing of text and citation, till she felt her own inability to award the palm, they came, with her prejudices already engaged, to the necessity of an infallible judge; and as their adversaries of the English church had generally left themselves vulnerable on this side, there was little difficulty in obtaining success. Like Hector in the spoils of Patroclus, our clergy had assumed to themselves the celestial armour of authority; but found that, however it might intimidate the multitude, it fitted them too ill to repel the spear that had been wrought in the same furnace. A writer of this school in the age of Charles the First, and incomparably superior to any of the churchmen belonging to it, in the brightness and originality of his genius, sir Thomas Browne, whose varied talents wanted nothing but the controlling supremacy of good sense to place him in the highest rank of our literature, will furnish a better instance of the prevailing bias than merely theological writings. He united a most acute and sceptical understanding with strong devotional sensibility, the temperament so conspicuous in Pascal and Johnson, and which has a peculiar tendency to seek the repose of implicit faith. "Where the Scripture is silent," says Browne in his Religio Medici, "the church is my text; where it speaks, 'tis but my comment." That jesuit must have been a disgrace to his order, who would have asked more than such a concession to secure a proselyte—the right of interpreting whatever was written, and of supplying whatever was not.

At this time, however, appeared one man in the field of religious debate, who struck out from that insidious track, of which his own experience had shown him the perils. Chillingworth, on whom nature had bestowed something like the same constitutional temperament as that to which I have just adverted, except that the reasoning power having a greater mastery, his religious sensibility rather gave earnestness to his love of truth than tenacity to his prejudices, had been induced, like so many others, to pass over to the Roman church. The act of transition, it may be observed, from a system of tenets wherein men had been educated, was in itself a vigorous exercise of free specu-

own half-way protestantism, and also of ingratiating himself with the queen, he had for a time gone along with the tide, till he found there was a real danger of being carried farther than he intended. This accounts for the well-known story told by Evelyn, that the jesuits at Rome spoke of him as their bitterest enemy. He is reported to have said, that they and the puritans were the chief obstacles to a re-union of the churches. There is an obscure story of a plot carried on by the pope's legate Con and the English jesuits against Laud, and detected in 1640 by one Andrew Habernfield, which some have treated as a mere fiction. Rushworth Abridg. iii. 232.

lation, and might be termed the suicide of private judgment. But in Chillingworth's restless mind there was an inextinguishable scepticism that no opiates could subdue; yet a scepticism of that species which belongs to a vigorous, not that which denotes a feeble understanding. Dissatisfied with his new opinions, of which he had never been really convinced, he panted to breathe the freer air of protestantism, and after a long and anxious investigation returned to the English church. He well redeemed any censure that might have been thrown on him, by his great work in answer to the jesuit Knott, entitled The Religion of Protestants a Safe Way to Salvation. In the course of his reflections he had perceived the insecurity of resting the reformation on any but its original basis, the independency of private opinion. This too he asserted with a fearlessness and consistency hitherto little known, even within the protestant pale; combining it with another principle, which the zeal of the early reformers had rendered them unable to perceive, and for want of which the adversary had perpetually discomfited them, namely, that the errors of conscientious men do not forfeit the favour of God. This endeavour to mitigate the dread of forming mistaken judgments in religion runs through the whole work of Chillingworth, and marks him as the founder, in this country, of what has been called the latitudinarian school of theology. In this view, which has practically been the most important one of the controversy, it may pass for an anticipated reply to the most brilliant performance on the opposite side, The History of the Variations of Protestant Churches; and those who, from a delight in the display of human intellect, or from more serious motives of inquiry, are led to these two masterpieces, will have seen, perhaps, the utmost strength that either party, in the great schism of Christendom, has been able to put forth.

This celebrated work, which gained its author the epithet of immortal, is now, I suspect, little studied even by the clergy. It is no doubt somewhat tedious, when read continuously, from the frequent recurrence of the same strain of reasoning, and from his method of following sentence by sentence the steps of his opponent; a method which, while it presents an immediate advantage to controversial writers, as it heightens their reputation at the expense of their adversary, is apt to render them very tiresome to posterity. But the closeness and precision of his logic, which this mode of incessant grappling with his antagonist served to display, are so admirable, perhaps indeed hardly rivalled in any book beyond the limits of strict science, that the study of Chillingworth might tend to chastise the verbose and indefinite declamation so characteristic of the present day. His style, though by no means elegant or imaginative, has much of a nervous energy that rises into eloquence. He is chiefly, however, valuable for a true liberality and tolerance; far removed from indifference as may well be thought of one whose life was consumed in searching for truth, but diametrically adverse to those pretensions which seem of late years to have been regaining ground among the Anglican divines.

The latitudinarian principles of Chillingworth appear to have been confirmed by his intercourse with a man, of whose capacity his contemporaries entertained so high an admiration, that he acquired the distinctive appellation of the Ever-memorable John Hales. This testi-

mony of so many enlightened men is not to be disregarded, even if we should be of opinion, that the writings of Hales, though abounding with marks of an unshackled mind, do not quite come up to the promise of his name. He had, as well as Chillingworth, borrowed from Leyden, perhaps a little from Racow, a tone of thinking upon some doctrinal points as yet nearly unknown, and therefore highly obnoxious in England. More hardy than his friend, he wrote a short treatise on schism, which tended, in pretty blunt and unlimited language, to overthrow the scheme of authoritative decisions in any church, pointing at the imposition of unnecessary ceremonies and articles of faith, as at once the cause and the apology of separation. This having been circulated in manuscript, came to the knowledge of Laud, who sent for Hales to Lambeth, and questioned him as to his opinions on that matter. Hales, though willing to promise that he would not publish the tract, receded not a jot from his free notions of ecclesiastical power; which he again advisedly maintained in a letter to the archbishop, now printed among his works. The result was equally honourable to both parties; Laud bestowing a canonry of Windsor on Hales, which, after so bold an avowal of his opinion, he might accept without the slightest reproach. A behaviour so liberal forms a singular contrast to the rest of this prelate's history. It is a proof, no doubt, that he knew how to set such a value on great abilities and learning, as to forgive much that wounded his pride. But besides that Hales had not made public this treatise on schism, for which I think he could not have escaped the high commission court, he was known by Laud to stand far aloof from the Calvinistic sectaries, having long since embraced in their full extent the principles of Episcopius, and to mix no alloy of political faction with the philosophical hardiness of his speculations.[1]

These two remarkable ornaments of the English church, who dwelt apart like stars, to use the fine expression of a living poet, from the vulgar bigots of both her factions, were accustomed to meet, in the society of some other eminent persons, at the house of lord Falkland, near Burford. One of those, who then in a ripe and learned youth, became afterwards so conspicuous a name in our annals and our literature, Mr. Hyde, the chosen bosom-friend of his host, has dwelt with affectionate remembrance on the conversations of that mansion. His marvellous talent of delineating character, a talent, I think, unrivalled by any writer, (since combining the bold outline of the ancient historians with the analytical minuteness of De Retz and St. Simon, it produces a higher effect than either,) is never more beautifully displayed than in that part of the memoirs of his life, where Falkland, Hales, Chillingworth, and the rest of his early friends, pass over the scene.

For almost thirty ensuing years, Hyde himself becomes the companion of our historical reading. Seven folio volumes contain his History of the Rebellion, his Life, and the Letters, of which a large portion are his own. We contract an intimacy with an author who has

[1] Heylin, in his Life of Laud, p. 340., tells this story, as if Hales had recanted his opinions, and owned Laud's superiority over him in argument. This is ludicrous, considering the relative abilities of the two men. And Hales's letter to the archbishop, which is full as bold as his treatise on schism, proves that Heylin's narrative is one of his many wilful falsehoods; for, by making himself a witness to the pretended circumstances, he has precluded the excuse of error.

poured out to us so much of his heart. Though lord Clarendon's chief work seems to me not quite accurately styled a history, belonging rather to the class of memoirs,[1] yet the very reasons of this distinction, the long circumstantial narrative of events wherein he was engaged, and the slight notice of those which he only learned from others, render it more interesting, if not more authentic. Conformably to human feelings, though against the rules of historical composition, it bears the continual impress of an intense concern about what he relates. This depth of personal interest, united frequently with an eloquence of the heart and imagination that struggles through an involved, incorrect, and artificial diction, makes it, one would imagine, hardly possible for those most alien from his sentiments to read his writings without some portion of sympathy. But they are on this account not a little dangerous to the soundness of our historical conclusions; the prejudices of Clarendon, and his negligence as to truth, being full as striking as his excellencies, and leading him not only into many erroneous judgments, but into frequent inconsistencies.

These inconsistencies are nowhere so apparent as in the first or introductory book of his history, which professes to give a general view of the state of affairs before the meeting of the long parliament. It is certainly the most defective part of his work. A strange mixture of honesty and disingenuousness pervades all he has written of the early years of the king's reign; retracting, at least in spirit, in almost every page what has been said in the last, from a constant fear that he may have admitted so much against the government as to make his readers impute too little blame to those who opposed it. Thus after freely censuring the exactions of the crown, whether on the score of obsolete

[1] It appears by the late edition at Oxford, (1826,) that lord Clarendon twice altered his intention as to the nature of his work, having originally designed to write the history of his time, which he changed to memorials of his own life, and again returned to his first plan. The consequence has been, that there are two manuscripts of the History and of the Life, which in a great degree are transcripts one from the other or contain the same general fact with variations. That part of the Life, previous to 1660, which is not inserted in the History of the Rebellion, is by no means extensive.

The genuine text of the History has only been published in 1826. A story, as is well known, obtained circulation within thirty years after its first appearance, that the manuscript had been materially altered or interpolated. This was positively denied, and supposed to be wholly disproved. It turns out however that, like many other anecdotes, it had a considerable basis of truth, though with various erroneous additions, and probably wilful misrepresentations. It is nevertheless surprising that the worthy editor of the original manuscript should say "that the genuineness of the work has rashly, and for party purposes, been called in question," when no one, I believe, has ever disputed its genuineness; and the anecdote to which I have alluded, and to which, no doubt, he alludes, has been by his own industry (and many thanks we owe him for it) perfectly confirmed in substance. For though he endeavours, not quite necessarily, to excuse or justify the original editors (who seem to have been Sprat and Aldrich, with the sanction probably of lords Clarendon and Rochester, the historian's sons), for what they did, and even singularly asserts, that "the present collation satisfactorily proves that they have in no one instance added, suppressed, or altered any historical fact;" (Adv. to ed. 1826, p. v.) yet it is certain that, besides the perpetual impertinence of mending the style, there are several hundred variations which affect the sense, introduced from one motive or another, and directly contrary to the laws of literary integrity. The long passages inserted in the appendixes to several volumes of this edition contain surely historical facts that had been suppressed. And, even with respect to subordinate alterations, made for the purpose of softening traits of the author's angry temper, or correcting his mistakes, the general effect of taking such liberties with a work is to give it an undue credit in the eyes of the public, and to induce men to believe matters upon the writer's testimony, which they would not have done so readily if his errors had been fairly laid before them. Clarendon indeed is so strangely loose in expression as well as incorrect in statement, that it would have been impossible to remove his faults of this kind without writing again half the history; but it is certain that great trouble was very unduly taken to lighten their impression upon the world

prerogative or without any just pretext at all, especially that of ship-money, and confessing that "those foundations of right, by which men valued their security, were never, to the apprehension and understanding of wise men, in more danger of being destroyed," he turns to dwell on the prosperous state of the kingdom during this period, "enjoying the greatest calm and the fullest measure of felicity that any people in any age for so long time together have been blessed with," till he works himself up to a strange paradox, that "many wise men thought it a time wherein those two adjuncts, which Nerva was deified for uniting, Imperium et Libertas, were as well reconciled as is possible."

Such wisdom was not, it seems, the attribute of the nation. "These blessings," he says, "could but enable, not compel us to be happy; we wanted that sense, acknowledgment, and value of our own happiness which all but we had, and took pains to make, when we could not find, ourselves miserable. There was in truth a strange absence of understanding in most, and a strange perverseness of understanding in the rest; the court full of excess, idleness, and luxury; the country full of pride, mutiny, and discontent; every man more troubled and perplexed at that they called the violation of the law, than delighted or pleased with the observation of all the rest of the charter; never imputing the increase of their receipts, revenue, and plenty, to the wisdom, virtue, and merit of the crown, but objecting every small imposition to the exorbitancy and tyranny of the government." (Clar. Papers.)

This strange passage is as inconsistent with other parts of the same chapter, and with Hyde's own conduct at the beginning of the parliament, as it is with all reasonable notions of government.[1] For if kings and ministers may plead in excuse for violating one law, that they have not transgressed the rest (though it would be difficult to name any violation of law that Charles had not committed); if this were enough to reconcile their subjects, and to make dissatisfaction pass for a want

[1] May thus answers, by a *sort* of prophetic anticipation, this passage of Clarendon:—"Another sort of men," he says, "and especially lords and gentlemen, by whom the pressures of the government were not much felt, who enjoyed their own plentiful fortunes, with little or insensible detriment, looking no farther than their present safety and prosperity, and the yet undisturbed peace of the nation, whilst other kingdoms were embroiled in calamities, and Germany sadly wasted by a sharp war, did nothing but applaud the happiness of England, and called those ungrateful factious spirits, who complained of the breach of laws and liberties; that the kingdom abounded with wealth, plenty, and all kinds of elegances, more than ever; that it was for the honour of a people, that the monarch should live splendidly, and not be curbed at all in his prerogative, which would bring him into greater esteem with other princes, and more enable him to prevail in treaties; that what they suffered by monopolies was insensible, and not grievous, if compared with other states; that the duke of Tuscany sat heavier upon his people in that very kind; that the French king had made himself an absolute lord, and quite depressed the power of parliaments, which had been there as great as in any kingdom, and yet that France flourished, and the gentry lived well; that the Austrian princes, especially in Spain, laid heavy burdens upon their subjects. Thus did many of the English gentry, by way of comparison, in ordinary discourse, plead for their own servitude.

"The courtiers would begin to dispute against parliaments, in their ordinary discourse, that they were cruel to those whom the king favoured, and too injurious to his prerogative; that the late parliament stood upon too high terms with the king, and that they hoped the king should never need any more parliaments. Some of the greatest statesmen and privy-councillors would ordinarily laugh at the ancient language of England, when the word liberty of the subject was named. But these gentlemen, who seemed so forward in taking up their own yoke, were but a small part of the nation (though a number considerable enough to make a reformation hard) compared with those gentlemen who were sensible of their birthrights and the true interests of the kingdom; on which side the common people in the generality, and the country freeholders stood, who would rationally argue of their own rights, and those oppressions that were laid upon them." Hist. of Parliament, p 12. (edit. 1812.)

or perversion of understanding, they must be in a very different predicament from all others who live within the pale of civil society, whose obligation to obey its discipline is held to be entire and universal. By this great writer's own admissions, the decision in the case of ship-money had shaken every man's security for the enjoyment of his private inheritance. Though as yet not weighty enough to be actually very oppressive, it might, and, according to the experience of Europe, undoubtedly would, become such by length of time and peaceable submission.

We may acknowledge without hesitation, that the kingdom had grown during this period into remarkable prosperity and affluence. The rents of land were very considerably increased, and large tracts reduced into cultivation. The manufacturing towns, the seaports, became more populous and flourishing. The metropolis increased in size with a rapidity that repeated proclamations against new buildings could not restrain. The country houses of the superior gentry throughout England were built on a scale which their descendants, even in days of more redundant affluence, have seldom ventured to emulate. The kingdom was indebted for this prosperity to the spirit and industry of the people, to the laws which secure the commons from oppression, and which, as between man and man, were still fairly administered, to the opening of fresh channels of trade in the eastern and western worlds (rivulets, indeed, as they seem to us, who float in the full tide of modern commerce, yet at that time no slight contributions to the stream of public wealth); but above all to the long tranquillity of the kingdom, ignorant of the sufferings of domestic, and seldom much affected by the privations of foreign war. It was the natural course of things, that wealth should be progressive in such a land. Extreme tyranny, such as that of Spain in the Netherlands, might, no doubt, have turned back the current. A less violent, but long-continued despotism, such as has existed in several European monarchies, would, by the corruption and incapacity which absolute governments engender, have retarded its advance. The administration of Charles was certainly not of the former description. Yet it would have been an excess of loyal stupidity in the nation to have attributed their riches to the wisdom or virtue of the court, which had injured the freedom of trade by monopolies and arbitrary proclamations, and driven away industrious manufacturers by persecution.

If we were to draw our knowledge from no other book than lord Clarendon's History, it would still be impossible to avoid the inference that misconduct on the part of the crown, and more especially of the church, was the chief, if not the sole, cause of these prevailing discontents. At the time when Laud unhappily became archbishop of Canterbury, "the general temper and humour of the kingdom," he tells us, "was little inclined to the papist, and less to the puritan. There were some late taxes and impositions introduced, which rather angered than grieved the people, who were more than repaired by the quiet peace and prosperity they enjoyed; and the murmurs and discontent that was, appeared to be against the excess of power exercised by the crown, and supported by the judges in Westminster-hall. The church was not repined at, nor the least inclination to alter the govern-

ment and discipline thereof, or to change the doctrine. Nor was there at that time any considerable number of persons of any valuable condition throughout the kingdom, who did wish either; and the cause of so prodigious a change in so few years after was too visible from the effects." This cause, he is compelled to admit, in a passage too diffuse to be extracted, was the passionate and imprudent behaviour of the primate. Can there be a stronger proof of the personal prepossessions which for ever distort the judgment of this author, than that he should blame the remissness of Abbot, who left things in so happy a condition; and assert that Laud executed the trust of solely managing ecclesiastical affairs, "infinitely to the service and benefit" of that church which he brought to destruction? Were it altogether true, what is doubtless much exaggerated, that in 1633 very little discontent at the measures of the court had begun to prevail, it would be utterly inconsistent with experience and observation of mankind to ascribe the almost universal murmurs of 1639 to any other cause than bad government. But Hyde, attached to Laud and devoted to the king, shrunk from the conclusion that his own language would afford; and his piety made him seek in some mysterious influences of Heaven, and in a judicial infatuation of the people, for the causes of those troubles which the fixed and uniform dispensations of Providence were sufficient to explain.[1]

It is difficult to pronounce how much longer the nation's signal forbearance would have held out, if the Scots had not precipitated themselves into rebellion. There was still a confident hope that parliament must soon or late be assembled; and it seemed equally impolitic and unconstitutional to seek redress by any violent means. The patriots, too, had just cause to lament the ambition of some whom the court's favour subdued, and the levity of many more whom its vanities allured. But the unexpected success of the tumultuous rising at Edinburgh against the service-book revealed the impotence of the English government. Destitute of money, and neither daring to ask it from a parliament nor to extort it by any fresh demand from the people, they

[1] It is curious to contrast the inconsistent and feeble apologies for the prerogative we read in Clarendon's History, with his speech before the lords, on impeaching the judges for their decision in the case of ship-money. In this he speaks very strongly as to the illegality of the proceedings of the judges in Rolls and Vassal's cases, though in his History he endeavours to insinuate that the king had a right to tonnage and poundage: he inveighs also against the decision in Bates's case, which he vindicates in his History. Somers Tracts, iv. 302. Indeed the whole speech is irreconcilable with the picture he afterwards drew of the prosperity of England, and of the unreasonableness of discontent.

The fact is, that when he sat down in Jersey to begin his History, irritated, disappointed, afflicted at all that had passed in the last five years, he could not bring his mind back to the state in which it had been at the meeting of the long parliament; and believed himself to have partaken far less in the sense of abuses and desire of redress than he had really done. There may be, however, some reason to suspect, that he had, in some respects, gone farther in the first draught of his History than appears at present; that is, I conceive that he erased himself some passages or phrases unfavourable to the court. Let the reader judge from the following sentence in a letter to Nicholas relating to his work, dated Feb. 12. 1647:—"I will offer no excuse for the entertaining of Con, who came after Panzani, and was succeeded by Rosetti; which was a business of so much folly, or worse, that I have mentioned it in my prolegomena (of those distempers and exorbitances in government which prepared the people to submit to the fury of this parliament) as an offence and scandal to religion, in the same degree that ship-money was to liberty and property." State Papers, ii. 336. But when we turn to the passage in the History of the Rebellion, p. 268., where this is mentioned, we do not find a single expression reflecting on the court, though the catholics themselves are censured for imprudence. This may serve to account for several of Clarendon's inconsistencies, for nothing renders an author so inconsistent with himself, as corrections made in a different temper of mind from that which actuated him in the first composition.

hesitated whether to employ force or to submit to the insurgents. In the exchequer, as lord Northumberland wrote to Strafford, there was but the sum of 200*l.*; with all the means that could be devised, not above 110,000*l.* could be raised; the magazines were all unfurnished, and the people were so discontented by reason of the multitude of projects daily imposed upon them, that he saw reason to fear a great part of them would be readier to join with the Scots than to draw their swords in the king's service. (Strafford Letters, ii. 186.) "The discontents at home," he observes some months afterwards, "do rather increase than lessen, there being no course taken to give any kind of satisfaction. The king's coffers were never emptier than at this time; and to us that have the honour to be near about him, no way is yet known how he will find means either to maintain or begin a war without the help of his people." (Id. 267.) Strafford himself dissuaded a war in such circumstances, though hardly knowing what other course to advise. (Id. 191.) He had now awaked from the dreams of infatuated arrogance, to stand appalled at the perils of his sovereign, and his own. In the letters that passed between him and Laud after the Scots troubles had broken out, we read their hardly concealed dismay, and glimpses of "the two-handed engine at the door." Yet pride forbade them to perceive or confess the real causes of this portentous state of affairs. They fondly laid the miscarriage of the business of Scotland on failure in the execution, and an "over-great desire to do all quietly."[1]

In this imminent necessity, the king had recourse to those who had least cause to repine at his administration. The catholic gentry, at the powerful interference of their queen, made large contributions towards the campaign of 1639. Many of them volunteered their personal service. There was, indeed, a further project, so secret, that it is not mentioned, I believe, till very lately, by any historical writer. This was to procure 10,000 regular troops from Flanders, in exchange for so many recruits to be levied for Spain in England and Ireland. These troops were to be for six months in the king's pay. Colonel Gage, a catholic, and the negotiator of this treaty, hints that the pope would probably contribute money, if he had hopes of seeing the penal laws repealed; and observes, that with such an army the king might both subdue the Scots, and at the same time keep his parliament in check, so as to make them come to his conditions. (Clarendon State Papers, ii. 19.) The treaty, however, was never concluded. Spain was far more inclined to revenge herself for the bad faith she imputed to Charles, than to lend him any assistance. Hence, when, in the next year, he offered to declare war against Holland, as soon as he should have subdued the Scots, for a loan of 1,200,000 crowns, the Spanish ambassador haughtily rejected the proposition. (Clarendon State Papers, ii. 84., and App., xxvi.)

The pacification, as it was termed, of Berwick in the summer of 1639 has been represented by several historians as a measure equally ruinous

[1] Strafford Letters, ii. 250. "It was ever clear in my judgment," says Strafford, "that the business of Scotland, so well laid, so pleasing to God and man, had it been effected, was miserably lost in the execution; yet could never have so fatally miscarried, if there had not been a failure likewise in this direction, occasioned either by over-great desires to do all quietly without noise, by the state of the business misrepresented, by opportunities and seasons slipped, or by some such like." Laud answers in the same strain:—"Indeed, my lord, the

and unaccountable. That it was ruinous, that it formed one link in the chain that dragged the king to destruction, is most evident; but it was both inevitable and easy of explanation. The treasury, whatever Clarendon and Hume may have said, was perfectly bankrupt.[1] The citizens of London, on being urged by the council for a loan, had used as much evasion as they dared.[2] The writs for ship-money were executed with greater difficulty, several sheriffs willingly acquiescing in the excuses made by their counties.[3] Sir Francis Seymour, brother to the earl of Hertford, and a man, like his brother, of very moderate principles, absolutely refused to pay it, though warned by the council to beware how he disputed its legality.[4] Many of the Yorkshire gentry, headed by sir Marmaduke Langdale, combined to refuse its payment. (Strafford Letters, ii. 308.) It was impossible to rely again on catholic subscriptions, which the court of Rome, as I have mentioned above, instigated perhaps by that of Madrid, had already tried to restrain. The Scots were enthusiastic, nearly unanimous, and entire masters of their country. The English nobility, in general, detested the archbishop, to whose passion they ascribed the whole mischief, and feared to see the king become despotic in Scotland. If the terms of Charles's treaty with his revolted subjects were unsatisfactory and indefinite, enormous in concession, and yet affording a pretext for new encroachments, this is no more than the common lot of the weaker side.

There was one possible, though not, under all the circumstances very likely, method of obtaining the sinews of war; the convocation of parliament. This many, at least, of the king's advisers appear to have long desired, could they but have vanquished his obstinate reluctance. This is an important observation: Charles, and he perhaps alone, unless we reckon the queen, seems to have taken a resolution of superseding absolutely and for ever the legal constitution of England. The judges, the peers, lord Strafford, nay, if we believe his dying speech, the primate himself, retained enough of respect for the ancient laws, to desire that parliaments should be summoned, whenever they might be

business of Scotland, I can be bold to say without vanity, was well laid, and was a great service to the crown as well as to God himself. And that it should so fatally fail in the execution is a great blow as well to the power as honour of the king," &c. He lays the blame in a great degree on Lord Traquair. P. 264.

[1] Hume says that Charles had an accumulated treasure of 200,000*l.* at this time. I know no his authority for the particular sum: but Clarendon pretends that "the revenue had been so well improved, and so wisely managed, that there was money in the exchequer proportionable for the undertaking any noble enterprise." This is, at the best, strangely hyperbolical; but, in fact, there was an absolute want of every thing. Ship-money would have been a still more crying sin than it was, if the produce had gone beyond the demands of the state; nor was this ever imputed to the court. This is one of lord Clarendon's capital mistakes; for it leads him to speak of the treaty of Berwick as a measure that might have been avoided, and even, in one place, to ascribe it to the king's excessive lenity and aversion to shedding blood; wherein a herd of superficial writers have followed him.

[2] Clarendon State Papers, ii. 46. 54. Lest it should seem extraordinary that I sometimes contradict lord Clarendon on the authority of his own collection of papers, it may be necessary to apprise the reader, that none of these, anterior to the civil war, had come in his possession till he had written this part of his History.

[3] The grand jury of Northampton presented ship-money as a grievance. But the privy-council wrote to the sheriff, that they would not admit his affected excuses; and if he neglected to execute the writ, a quick and exemplary reparation would be required of him. Rushworth Abr. iii. 93.

[4] Rushw. Abr. iii. 47. The king writes in the margin of Windebank's letter, informing him of Seymour's refusal:—"You must needs make him an example, not only by distress, but, if it be possible, an information in some court, as Mr. Attorney shall advise."

expected to second the views of the monarch. They felt that the new scheme of governing by proclamations and writs of ship-money could not and ought not to be permanent in England. The king reasoned more royally, and indeed much better. He well perceived that it was vain to hope for another parliament so constituted as those under the Tudors. He was ashamed (and that pernicious woman at his side would not fail to encourage the sentiment), that his brothers of France and Spain should have achieved a work, which the sovereign of England, though called an absolute king by his courtiers, had scarcely begun. All mention, therefore, of calling parliament grated on his ear. The declaration published at the dissolution of the last, that he should account it presumption for any to prescribe a time to him for calling parliaments, was meant to extend even to his own counsellors. He rated severely lord-keeper Coventry for a suggestion of this kind.[1] He came with much reluctance into Wentworth's proposal of summoning one in Ireland, though the superior control of the crown over parliaments in that kingdom was pointed out to him. "The king," says Cottington, "at the end of 1638, will not hear of a parliament; and he is told by a committee of learned men, that there is no other way."[2] This repugnance to meet his people, and his inability to carry on the war by any other methods, produced the ignominious pacification at Berwick. But as the Scots, grown bolder by success, had after this treaty almost thrown off all subjection, and the renewal of the war, or loss of the sovereignty over that kingdom, appeared necessary alternatives, overpowered by the concurrent advice of his council, and especially of Strafford, he issued writs for that which met in April, 1640.[3] They told him that, making trial once more of the ancient and ordinary way, he would leave his people without excuse, if that should fail; and have wherewithal to justify himself to God and the world, if he should be forced contrary to his inclinations to use extraordinary means, rather than through the peevishness of some factious spirits to suffer his state and government to be lost.[4]

It has been universally admitted that the parliament which met on the 13th of April, 1640, was as favourably disposed towards the king's service, and as little influenced by their many wrongs, as any man of ordinary judgment could expect.[5] But though cautiously abstaining

[1] "The king hath so rattled my lord-keeper, that he is now the most pliable man in England, and all thoughts of parliaments are quite out of his pate." Cottington to Strafford, 29th Oct. 1633. vol. i. p. 141.

[2] Vol. ii. p. 246. "So by this time," says a powerful writer, "all thoughts of ever having a parliament again was quite banished; so many oppressions had been set on foot, so many illegal actions done, that the only way to justify the mischiefs already done was to do that one greater; to take away the means which were ordained to redress them, the lawful government of England by parliaments." May, History of Parliament, p. 11.

[3] Sidney Papers, ii. 623. Clarendon Papers, ii. 81.

[4] Id. ibid. The attentive reader will not fail to observe, that this is the identical language of the famous advice imputed to Strafford, though used on another occasion.

[5] May. Clarendon. The latter says, upon the dissolution of this parliament: "It could never be hoped that so many sober and dispassionate men would ever meet again in that place, or fewer who brought ill purposes with them." This, like so many other passages in the noble historian, is calculated rather to mislead the reader. All the principal men who headed the popular party in the long parliament were members of this; and the whole body, so far as their subsequent conduct shows, was not at all constituted of different elements from the rest: for I find, by comparison of the list of this parliament, in Nalson's Collections, with that of the long parliament, in the Parliamentary History, that eighty, at most, who had not sat in the former, took the covenant; and that seventy-three, in the same circumstances, sat in the

from any intemperance, so much as to reprove a member for calling ship-money an abomination (no very outrageous expression), they sufficiently manifested a determination not to leave their grievances unredressed. Petitions against the manifold abuses in church and state covered their table; Pym, Rudyard, Waller, lord Digby, and others more conspicuous afterwards, excited them by vigorous speeches; they appointed a committee to confer with the lords, according to some precedents of the last reign, on a long list of grievances, divided into ecclesiastical innovations, infringements of the propriety of goods, and breaches of the privilege of parliament. They voted a request of the peers, who, Clarendon says, were more entirely at the king's disposal, that they would begin with the business of supply, and not proceed to debate on grievances till afterwards, to be a high breach of privilege.[1] There is not the smallest reason to doubt that they would have insisted on redress in all those particulars, with at least as much zeal as any former parliament, and that the king, after obtaining his subsidies, would have put an end to their remonstrances, as he had done before.[2] In order to obtain the supply he demanded, namely, twelve subsidies to be paid in three years, which, though unusual, was certainly not beyond his exigencies, he offered to release his claim to ship-money, in any manner they should point out. But this the commons indignantly repelled. They deemed ship-money the great crime of his administration, and the judgment against Mr. Hampden, the infamy of those who pronounced it. Till that judgment should be annulled, and those judges punished, the national liberties must be as precarious as ever. Even if they could hear of a compromise with so flagrant a breach of the constitution, and of purchasing their undoubted rights, the doctrine asserted in Mr. Hampden's case by the crown lawyers, and adopted by some of the judges, rendered all stipulations nugatory. The right of taxation had been claimed as an absolute prerogative so inherent in the crown, that no act of parliament could take it away. All former statutes, down to the petition of right, had been prostrated at the foot of the throne; by what new compact were the present parliament to give a sanctity more inviolable to their own?[3]

It will be in the recollection of my readers, that while the commons were deliberating whether to promise any supply before the redress of

king's convention at Oxford. The difference, therefore, was not so much in the men, as in the times; the bad administration and bad success of 1640, as well as the dissolution of the short parliament, having greatly aggravated the public discontents.

The court had never argued well of this parliament. "The elections," as lord Northumberland writes to lord Leicester at Paris, (Sidney Papers, ii. 641.), "that are generally made of knights and burgesses in this kingdom, give us cause to fear that the parliament will not sit long; for such as have dependence upon the court are in divers places refused, and the most refractory persons chosen."

There are some strange things said by Clarendon of the ignorance of the commons as to the value of twelve subsidies, which Hume, who loves to depreciate the knowledge of former times, implicitly copies. But they cannot be true of that enlightened body, whatever blunders one or two individuals might commit. The rate at which every man's estate was assessed to a subsidy was perfectly notorious; and the burden of twelve subsidies to be paid in three years, was more than the charge of ship-money they had been enduring.

[1] Journals. Parl. Hist. Nalson. Clarendon.

[2] The king had long before said, that "parliaments are like cats: they grow curst with age."

[3] See Mr Waller's speech on Crawley's impeachment. Nalson, ii. 358.

grievances, and in what measure, sir Henry Vane, the secretary, told them, that the king would accept nothing less than the twelve subsidies he had required; in consequence of which the parliament was dissolved next day. Clarendon followed by several others, has imputed treachery in this to Vane, and told us that the king regretted so much what he had done, that he wished, had it been practicable, to recall the parliament after its dissolution. This is confirmed, as to Vane, by the queen herself, in that interesting narrative which she communicated to Madame de Motteville.[1] Were it not for such authorities, seemingly independent of each other, yet entirely tallying, I should have deemed it more probable that Vane, with whom the solicitor-general Herbert had concurred, acted solely by the king's command. Charles, who feared and hated all parliaments, had not acquiesced in the scheme of calling the present, till there was no other alternative; an insufficient supply would have left him in a more difficult situation than before, as to the use of those extraordinary means, as they were called, which his disposition led him to prefer: the intention to assail parts of his administration more dear to him than ship-money, and especially the ecclesiastical novelties, was apparent. Nor can we easily give him credit for this alleged regret at the step he had taken, when we read the declaration he put forth, charging the commons with entering on examination of his government in an insolent and audacious manner, traducing his administration of justice, rendering odious his officers and ministers of state, and introducing a way of bargaining and contracting with the king, as if nothing ought to be given him by them but what he should purchase either by quitting somewhat of his royal prerogative, or by diminishing and lessening his revenue. (Parl. Hist. Rushworth. Nalson.) The unconstitutional practice of committing to prison some of the most prominent members, and searching their houses for papers, was renewed. And having broken loose again from the restraints of law, the king's sanguine temper looked to such a triumph over the Scots in the coming campaign, as no prudent man could think probable.

This dissolution of parliament in May, 1640, appears to have been a very fatal crisis for the king's popularity. Those who, with the loyalty natural to Englishmen, had willingly ascribed his previous misgovernment to evil counsels, could not any longer avoid perceiving

[1] Mem. de Motteville, i. 238-278. P. Orleans, Rév. de l'Angleterre, tome iii., says the same of Vane; but his testimony may resolve itself into the former. It is to be observed, that ship-money which the king offered to relinquish, brought in 200,000*l.* a year, and that the proposed twelve subsidies would have amounted, at most, to 840,000*l.*, to be paid in three years. Is it surprising that when the house displayed an intention not to grant the whole of this, as appears by Clarendon's own story, the king and his advisers should have thought it better to break off altogether? I see no reason for imputing treachery to Vane, even if he did not act merely by the king's direction. Clarendon says, he and Herbert persuaded the king that the house "would pass such a vote against ship-money as would blast that revenue and other branches of the receipt; which others believed they would not have the confidence to have attempted, and very few that they would have had the credit to have compassed." P. 245. The word *they* is as inaccurate as is commonly the case with this writer's language. But does he mean that the house would not have passed a vote against ship-money? They had already entered on the subject, and sent for records; and he admits himself, that they were resolute against granting subsidies as a consideration for the abandonment of that grievance. Besides, Hyde himself not only inveighs most severely in his History against ship-money, but was himself one of the managers of the impeachment against six judges for their conduct in regard to it; and his speech before the house of lords on that occasion is extant. Rushw. Abr. ii. 477. But this is merely one instance of his eternal inconsistency.

his mortal antipathy to any parliament that should not be as subservient as the cortes of Castile. The necessity of some great change became the common theme. "It is impossible," says lord Northumberland, at that time a courtier, "that things can long continue in the condition they are now in; so general a defection in this kingdom hath not been known in the memory of any!" (June 4, 1640. Sidney Papers, ii. 654.)

Several of those who thought most deeply on public affairs now entered into a private communication with the Scots insurgents. It seems probable from the well-known story of lord Saville's forged letter, that there had been very little connexion of this kind until the present summer.[1] And we may conjecture that during this ominous interval, those great projects, which were displayed in the next session, acquired consistence and ripeness by secret discussions in the houses of the earl of Bedford and lord Saye. The king meanwhile experienced aggravated misfortune and ignominy in his military operations. Ship-money indeed was enforced with greater rigour than before, several sheriffs and the lord mayor of London being prosecuted in the star-chamber for neglecting to levy it. Some citizens were imprisoned for refusing a loan. A new imposition was laid on the counties, under the name of coat-and-conduct-money, for clothing and defraying the travelling charges of the new levies.[2] A state of actual invasion, the Scots having passed the Tweed, might excuse some of these irregularities, if it could have been forgotten that the war itself was produced by the king's impolicy, and if the nation had not been prone to see friends and deliverers rather than enemies in the Scottish army. They were at the best indeed, troublesome and expensive guests to the northern counties, which they occupied; but the cost of their visit was justly laid at the king's door. Various arbitrary resources having been suggested in the council, and abandoned as inefficient and impracticable, such as the seizing the merchants' bullion in the mint, or issuing a debased coin; the unhappy king adopted the hopeless scheme of convening a great council of all the peers at York, as the only alternative of a parliament.[3] It was foreseen that this assembly would only advise the king to meet his people in a legal way. The public voice could no longer be suppressed. The citizens of London presented a petition to the king, complaining of grievances, and asking for a parliament. This was speedily followed by one signed by twelve peers of popular

[1] A late writer has spoken of this celebrated letter, as resting on very questionable authority. Lingard, x. 43. It is, however, mentioned as a known fact by several contemporary writers, and particularly by the earl of Manchester, in his unpublished Memorials, from which Nalson has made extracts; and who could neither be mistaken, nor have any apparent motive, in this private narrative, to deceive. Nalson, ii. 427.

[2] Rymer, xx. 432. Rushworth, iii. 163., &c. Nalson, i. 389., &c.

[3] Lord Clarendon seems not to have well understood the secret of this Great Council, and supposes it to have been suggested by those who wished for a parliament; whereas the Hardwicke Papers show the contrary. P. 116. & 118. His notions about the facility of composing the public discontent are strangely mistaken:—"Without doubt," he says, "that fire at that time, which did shortly after burn the whole kingdom, might have been covered under a bushel." But the whole of this introductory book of his History abounds with proofs that he had partly forgotten, partly never known, the state of England before the opening of the long parliament. In fact, the disaffection, or at least discontent, had proceeded so far in 1640, that no human skill could have averted a great part of the consequences. But Clarendon's partiality to the king, and to some of his advisers, leads him to see in every event particular causes, or an over-ruling destiny, rather than the sure operation of impolicy and misgovernment.

character.[1] The lords assembled at York almost unanimously concurred in the same advice, to which the king, after some hesitation, gave his assent. They had more difficulty in bringing about a settlement with the Scots: the English army, disaffected and undisciplined, had already made an inglorious retreat; and even Strafford, though passionately against a treaty, did not venture to advise an engagement.[2] The majority of the peers however overruled all opposition; and in the alarming posture of his affairs, Charles had no resource but the dishonourable pacification of Ripon.[3] Anticipating the desertion of some who had partaken in his councils, and conscious that others would more stand in need of his support than be capable of affording any, he awaited in fearful suspense the meeting of parliament.

CHAPTER IX.

FROM THE MEETING OF THE LONG PARLIAMENT TO THE BEGINNING OF THE CIVIL WAR.

Character of the Long Parliament—Its salutary Measures—Triennial Bill—Other beneficial Laws—Observations—Impeachment of Strafford—Discussion of its Justice—Act against Dissolution of Parliament without its Consent—Innovations meditated in the Church—Schism in the Constitutional Party—Remonstrance of November 1641*—Suspicions of the King's Sincerity—Question of the Militia—Historical Sketch of Military Force in England—Encroachments of the Parliament—Nineteen Propositions—Discussion of the respective Claims of the two Parties to Support—Faults of both.*—pp. 359–398.

WE are now arrived at that momentous period in our history which no Englishman ever regards without interest, and few without prejudice; the period, from which the factions of modern times trace their divergence; which, after the lapse of almost two centuries, still calls forth the warm emotions of party-spirit, and affords a test of politi al principles; at that famous parliament, the theme of so much eulogy and of so much reproach; that synod of inflexible patriots with so me, that conclave of traitorous rebels with others; that assembly, we may more truly say, of unequal virtue and chequered fame, which, after having acquired a higher claim to our gratitude, and effected more for

[1] These were Hertford, Bedford, Essex, Warwick, Paget, Wharton, Saye, Brook, Kimbolton, Saville, Mulgrave, Bolingbroke. Nalson, 436, 437.

[2] This appears from the minutes of the council (Hardwicke Papers), and contradicts he common opinion. Lord Conway's disaster at Newburn was by no means surprising; the English troops, who had been lately pressed into service, were perfectly mutinous; some regiments had risen and even murdered their officers on the road. Rymer, 414. 425.

[3] The Hardwicke State Papers, ii. 168, &c. contain much interesting information about the council of York. See also the Clarendon collection for some curious letters, with marginal notes by the king. In one of these he says:—"The mayor now, with the city, are to be flattered, not threatened." P. 123. Windebank writes to him in another, (Oct. 16. 1640,) that the clerk of the lower house of parliament had come to demand the journal book of the last assembly and some petitions, which, by the king's command, he (Windebank) had taken into his custody, and requests to know if they should be given up. Charles writes on the margin:—"Aye, by all means." P. 132.

our liberties, than any that had gone before or that has followed, ended by subverting the constitution it had strengthened, and by sinking in its decrepitude, and amidst public contempt, beneath a usurper it had blindly elevated to power. It seems agreeable to our plan, first to bring together those admirable provisions by which this parliament restored and consolidated the shattered fabric of our constitution, before we advert to its measures of more equivocal benefit, or its fatal errors; an arrangement not very remote from that of mere chronology, since the former were chiefly completed within the first nine months of its session, before the king's journey to Scotland in the summer of 1641.

It must, I think, be admitted by every one who concurs in the representation given in this work, and especially in the last chapter, of the practical state of our government, that some new securities of a more powerful efficacy than any which the existing laws held forth were absolutely indispensable for the preservation of English liberties and privileges. These, however sacred in name, however venerable by prescription, had been so repeatedly transgressed, that to obtain their confirmation, as had been done in the petition of right, and that as the price of large subsidies, would but expose the commons to the secret derision of the court. The king, by levying ship-money in contravention of his assent to that petition, and by other marks of insincerity, had given too just cause for suspicion that though very conscientious in his way, he had a fund of casuistry at command that would always release him from any obligation to respect the laws. Again, to punish delinquent ministers was a necessary piece of justice; but who could expect that any such retribution would deter ambitious and intrepid men from the splendid lures of power? Whoever, therefore, came to the parliament of November 1640, with serious and steady purposes for the public weal, and most, I believe, except mere courtiers, entertained such purposes according to the measure of their capacities and energies, must have looked to some essential change in the balance of government, some important limitations of royal authority, as the primary object of his attendance.

Nothing could be more obvious than that the excesses of the late unhappy times had chiefly originated in the long intermission of parliaments. No lawyer would have dared to suggest ship-money with the terrors of a house of commons before his eyes. But the king's known resolution to govern without parliaments gave bad men more confidence of impunity. This resolution was not likely to be shaken by the unpalatable chastisement of his servants and redress of abuses, on which the present parliament was about to enter. A statute as old as the reign of Edward III. had already provided, that parliaments should be held "every year, or oftener, if need be."[1] But this enactment had in no age been respected. It was certain that in the present temper of the administration, a law simply enacting that the interval between parliaments should never exceed three years, would prove wholly ineffectual. In the famous act therefore for triennial parliaments, the

[1] 4 E. III. c. 14. It appears by the Journals, 30th Dec. 1640, that the Triennial Bill was originally for the yearly holding of parliaments. It seems to have been altered in the committee: at least we find the title changed, Jan. 19.

first fruits of the commons' laudable zeal for reformation, such provisions were introduced as grated harshly on the ears of those who valued the royal prerogative above the liberties of the subject, but without which the act itself might have been dispensed with. Every parliament was to be ipso facto dissolved at the expiration of three years from the first day of its session, unless actually sitting at the time, and, in that case, at its first adjournment or prorogation. The chancellor or keeper of the great seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under pain of disability to hold his office, and further punishment; in case of his failure to comply with this provision, the peers were enabled and enjoined to meet at Westminster, and to issue writs to the sheriffs: the sheriffs themselves, should the peers not fulfil this duty, were to cause elections to be duly made; and in their default, at a prescribed time the electors themselves were to proceed to choose their representatives. No future parliament was to be dissolved or adjourned without its own consent, in less than fifty days from the opening of its session. It is more reasonable to doubt whether even these provisions would have afforded an adequate security for the periodical assembling of parliament, whether the supine and courtier-like character of the peers, the want of concert and energy in the electors themselves, would not have enabled the government to set the statute at nought, than to censure them as derogatory to the reasonable prerogative and dignity of the crown. To this important bill the king, with some apparent unwillingness, gave his assent. (Parl. Hist. 702. 717. Stat. 16 Car. I. c. 1.) It effected, indeed, a strange revolution in the system of his government. The nation set a due value on this admirable statute, the passing of which they welcomed with bonfires and every mark of joy.

After laying this solid foundation for the maintenance of such laws as they might deem necessary, the house of commons proceeded to cut away the more flagrant and recent usurpations of the crown. They passed a bill declaring ship-money illegal, and annulling the judgment of the exchequer chamber against Mr. Hampden. (C. 14.) They put an end to another contested prerogative, which, though incapable of vindication on any legal authority, had more support from a usage of fourscore years, the levying of customs on merchandise. In an act granting the king tonnage and poundage, it is "declared and enacted that it is and hath been the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever, ought or may be laid or imposed upon any merchandise exported or imported by subjects, denizens or aliens, without common consent in parliament."[1] This is the last statute that has been found necessary to restrain the crown from arbitrary taxation, and may be deemed the complement of those numerous provisions which the virtue of ancient times had extorted from the first and third Edwards.

[1] C. 8. The king had professed, in lord-keeper Finch's speech on opening the parliament of April 1640, that he had only taken tonnage and poundage de facto, without claiming it as a right, and had caused a bill to be prepared, granting it to him from the commencement of his reign. Parl. Hist. 533. See preface to Hargrave's Collection of Law Tracts, p. 195., and Rymer, xx. 118., for what Charles did with respect to impositions on merchandise. The long parliament called the farmers to account.

Yet these acts were hardly so indispensable, nor wrought so essential a change in the character of our monarchy, as that which abolished the star-chamber. Though it was evident how little the statute of Henry VII. could bear out that overweening power it had since arrogated, though the statute-book and parliamentary records of the best ages were irrefragable testimonies against its usurpations; yet the course of precedents under the Tudor and Stuart families was so invariable, that nothing more was at first intended than a bill to regulate that tribunal. A suggestion, thrown out, as Clarendon informs us, by one not at all connected with the more ardent reformers, led to the substitution of a bill for taking it altogether away.[1] This abrogates all exercise of jurisdiction, properly so called, whether of a civil or criminal nature, by the privy-council, as well as the star-chamber. The power of examining and committing persons charged with offences is by no means taken away; but, with a retrospect to the language held by the judges and crown lawyers in some cases that have been mentioned, it is enacted, that every person committed by the council or any of them, or by the king's special command, may have his writ of habeas corpus; in the return to which, the officer in whose custody he is shall certify the true cause of his commitment, which the court, from whence the writ has issued, shall within three days examine, in order to see whether the cause thus certified appear to be just and legal or not, and do justice accordingly by delivering, bailing, or remanding the party. Thus fell the great court of star-chamber; and with it, the whole irregular and arbitrary practice of government, that had for several centuries so thwarted the operation and obscured the light of our free constitution, that many have been prone to deny the existence of those liberties which they found so often infringed, and to mistake the violations of law for its standard.

With the court of Star-chamber perished that of the high commission, a younger birth of tyranny, but perhaps even more hateful, from the peculiar irritation of the times. It had stretched its authority beyond the tenor of the act of Elizabeth, whereby it had been created, and which limits its competence to the correction of ecclesiastical offences, according to the known boundaries of ecclesiastical jurisdiction, assuming a right, not only to imprison, but to fine the laity, which was generally reckoned illegal.[2] The statute repealing that of Elizabeth, under which the high commission existed, proceeds to take away from the ecclesiastical courts all power of inflicting temporal penalties, in terms so large, and doubtless not inadvertently employed, as to render

[1] 16 Car. I. c. 10. The abolition of the star-chamber was first moved, Mar. 5th, 1641, by lord Andover, in the house of lords, to which he had been called by writ. Both he and his father, the earl of Berkshire, were zealous royalists during the subsequent war. Parl. Hist. 722. But he is not, I presume, the person to whom Clarendon alludes. This author insinuates that the act for taking away the star-chamber passed both houses without sufficient deliberation, and that the peers did not venture to make any opposition; whereas there were two conferences between the houses on the subject, and several amendments and provisos made by the lords, and agreed by the commons. Scarce any bill, during this session, received so much attention. The king made some difficulty about assenting to the bills taking away the star-chamber and high commission courts, but soon gave way. Parl. Hist. 853.

[2] Coke has strongly argued the illegality of fining and imprisoning by the high commission: 4th Inst. 324. And he omitted this power in a commission he drew, "leaving us," says bishop Williams, "nothing but the old rusty sword of the church, excommunication." Calaba, p. 103. Care was taken to restore this authority in the reign of Charles.

their jurisdiction nugatory. This part of the act was repealed after the restoration; and like the other measures of that time, with little care to prevent the recurrence of those abuses which had provoked its enactments. (16 Car. I. c. 11.)

A single clause in the act that abolished the star-chamber was sufficient to annihilate the arbitrary jurisdiction of several other irregular tribunals, grown out of the despotic temper of the Tudor dynasty:—the court of the president and council of the North, long obnoxious to the common lawyers, and lately the sphere of Strafford's tyrannical arrogance;[1] the court of the president and council of Wales and the Welsh marches, which had pretended, as before mentioned, to a jurisdiction over the adjacent counties of Salop, Worcester, Hereford, and Gloucester; with those of the duchy of Lancaster and county palatine of Chester. These, under various pretexts, had usurped so extensive a cognisance as to deprive one third of England of the privileges of the common law. The jurisdiction, however, of the two latter courts in matters touching the king's private estate has not been taken away by the statute. Another act afforded remedy for some abuses in the stannary courts of Cornwall and Devon. (C. 15.) Others retrenched the vexatious prerogative of purveyance, and took away that of compulsory knighthood. (C. 19. 20.) And one of greater importance put an end to a fruitful source of oppression and complaint, by determining for ever the extent of royal forests, according to their boundaries in the twentieth year of James, annulling all the perambulations and inquests by which they had subsequently been enlarged. (Carolus 16.)

I must here reckon, among the beneficial acts of this parliament, one that passed some months afterwards, after the king's return from Scotland, and perhaps the only measure of that second period on which we can bestow unmixed commendation. The delays and uncertainties of raising troops by voluntary enlistment, to which the temper of the English nation, pacific though intrepid, and impatient of the strict control of martial law, gave small encouragement, had led to the usage of pressing soldiers for the service, whether in Ireland, or on foreign expeditions. This prerogative seeming dangerous and oppressive, as well as of dubious legality, it is recited in the preamble of an act empowering the king to levy troops by this compulsory method for the special exigency of the Irish rebellion, that "by the laws of this realm, none of his majesty's subjects ought to be impressed or compelled to go out of his country to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions." (C. 28.) The king, in a speech from the throne, adverted to this bill while passing through the houses, as an invasion of his prerogative. This notice of a parliamentary proceeding the commons resented as a breach of their privilege; and having obtained the consent of the lords to a joint remonstrance, the king, who was in no state

[1] Hyde distinguished himself as chairman of the committee which brought in the bill for abolishing the court of York. In his speech on presenting this to the lords, he alludes to the tyranny of Strafford, not rudely, but in a style hardly consistent with that of his History. Parl. Hist. 766. The editors, however, softened a little what he did say in one or two places: as where he uses the word *tyranny*, in speaking of lord Mountnorris's case.

to maintain his objection, gave his assent to the bill. In the reigns of Elizabeth and James, we have seen frequent instances of the crown's interference as to matters debated in parliament. But from the time of the long parliament, the law of privilege, in this respect, has stood on an unshaken basis.[1]

These are the principal statutes which we owe to this parliament. They give occasion to two remarks of no slight importance. In the first place, it will appear on comparing them with our ancient laws and history, that they made scarce any material change in our constitution, such as it had been established and recognised under the house of Plantagenet: the law for triennial parliaments even receded from those unrepealed provisions of the reign of Edward III., that they should be assembled annually. The court of star-chamber, if it could be said to have a legal jurisdiction, traced it only to the Tudor period; its recent excesses were diametrically opposed to the existing laws, and the protestations of ancient parliaments. The court of ecclesiastical commission was an off-set of the royal supremacy, established at the Reformation. The impositions on merchandise were both plainly illegal, and of no long usage. That of ship-money was flagrantly, and by universal confession, a strain of arbitrary power without pretext of right. Thus, in by far the greater part of the enactments of 1641, the monarchy lost nothing that it had anciently possessed; and the balance of our constitution might seem rather to have been restored to its former equipoise, than to have undergone any fresh change.

But those common liberties of England which our forefathers had, with such commendable perseverance, extorted from the grasp of power, though by no means so merely theoretical and nugatory in effect as some would insinuate, were yet very precarious in the best periods, neither well defined, nor exempt from anomalous exceptions, or from occasional infringements. Some of them, such as the statute for annual sessions of parliament, had gone into disuse. Those that were most evident, could not be enforced; and the new tribunals that, whether by law or usurpation, had reared their heads over the people, had made almost all public and personal rights dependent on their arbitrary will. It was necessary, therefore, to infuse new blood into the languid frame, and so to renovate our ancient constitution that the present era should seem almost a new birth of liberty. Such was the aim, especially, of those provisions which placed the return of parliaments at fixed intervals, beyond the power of the crown to elude. It was hoped that by their means, so long as a sense of public spirit should exist in the nation (and beyond that time it is vain to think of liberty), no prince, however able and ambitious, could be free from restraint for more than three years; an interval too short for the completion of arbitrary projects, and which few ministers would venture to employ in such a manner as might expose them to the future wrath of parliament.

It is to be observed, in the second place, that by these salutary

[1] Journals, 16th Dec. Parl. Hist. 968. Nalson, 750. It is remarkable that Clarendon, who is sufficiently jealous of all that he thought encroachment in the commons, does not censure their explicit assertion of this privilege. He lays the blame of the king's interference on St. John's advice: which is very improbable.

restrictions, and some new retrenchments of pernicious or abused prerogative, the long parliament formed our constitution such nearly as it now exists. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution; but none of them, perhaps, were strictly necessary for the preservation of our civil and political privileges; and it is rather from 1641, than any other epoch, that we may date their full legal establishment. That single statute which abolished the star-chamber gave every man a security which no other enactment could have afforded, and which no government could essentially impair. Though the reigns of the two latter Stuarts, accordingly, are justly obnoxious, and were marked by several illegal measures, yet, whether we consider the number and magnitude of their transgressions of law, or the practical oppression of their government, these princes fell very short of the despotism that had been exercised, either under the Tudors, or the two first of their own family.

From this survey of the good works of the long parliament, we must turn our eyes with equal indifference to the opposite picture of its errors and offences; faults which, though the mischiefs they produced were chiefly temporary, have yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions. In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary; and that, even when posterity may have cause to rejoice in the ultimate result, the existing generation are seldom compensated for their present loss of tranquillity. The very enemies of this parliament confess, that they met in November 1640 with almost unmingled zeal for the public good, and with loyal attachment to the crown. They were the chosen representatives of the commons of England, in an age more eminent for steady and scrupulous conscientiousness in private life, than any, perhaps, that had gone before or has followed; not the demagogues or adventurers of transient popularity, but men well-born and wealthy, than whom there could perhaps never be assembled five hundred more adequate to redress the grievances, or to fix the laws of a great nation. But they were misled by the excess of two passions, both just and natural in the circumstances wherein they found themselves, resentment and distrust; passions eminently contagious, and irresistible when they seize on the zeal and credulity of a popular assembly. The one betrayed them into a measure certainly severe and sanguinary, and in the eyes of posterity exposed to greater reproach than it deserved, the attainder of lord Strafford, and some other proceedings of too much violence; the other gave a colour to all their resolutions, and aggravated their differences with the king, till there remained no other arbitrator but the sword.

Those who know the conduct and character of the earl of Strafford, his abuse of power in the North, his far more outrageous transgressions in Ireland, his dangerous influence over the king's counsels, cannot hesitate to admit, if indeed they profess any regard to the constitution of this kingdom, that to bring so great a delinquent to justice according to the known process of law was among the primary duties of the new parliament. It was that which all, with scarce an exception but among

his own creatures (for most of the court were openly or in covert his enemies),[1] ardently desired; yet which the king's favour and his own commanding genius must have rendered a doubtful enterprise. He came to London, not unconscious of the danger, by his master's direct injunctions. The first days of the session were critical; and any vacillation or delay in the commons might probably have given time for some strong exertion of power to frustrate their designs. We must therefore consider the bold suggestion of Pym, to carry up to the lords an impeachment for high treason against Strafford, not only as a master-stroke of that policy which is fittest for revolutions, but as justifiable by the circumstances wherein they stood. Nothing short of a commitment to the Tower would have broken the spell that so many years of arbitrary dominion had been working. It was dissipated in the instant that the people saw him in the hands of the usher of the black rod; and with his power fell also that of his master; so that Charles, from the very hour of Strafford's impeachment, never once ventured to resume the high tone of command congenial to his disposition, or to speak to the commons but as one complaining of a superior force.[2]

The articles of Strafford's impeachment relate principally to his con-

[1] "A greater and more universal hatred," says Northumberland in a letter to Leicester, Nov. 13, 1640, (Sidney Papers, ii. 663.) "was never contracted by any person than he has drawn upon himself. He is not at all dejected, but believes confidently to clear himself in the opinion of all equal and indifferent-minded hearers, when he shall come to make his defence. The king is in such a straight that I do not know how he will possibly avoid, without endangering the loss of the whole kingdom, the giving way to the remove of divers persons, as well as other things that will be demanded by the parliament. After they have done questioning some of the great ones, they intend to endeavour the displacing of Jermyn, Newcastle, and Walter Montague."

[2] Clarendon, i. 305. Not one opposed the resolution to impeach the lord lieutenant, save that Falkland suggested the appointment of a committee, as more suitable to the gravity of their proceedings. But Pym frankly answered that this would ruin all; since Strafford would doubtless obtain a dissolution of the parliament, unless they could shut him out from access to the king.

The Letters of Robert Baillie, Principal of the University of Glasgow (two vols. Edinburgh, 1775,) abound with curious information as to this period, and for several subsequent years. Baillie was one of the Scots commissioners deputed to London at the end of 1640, and took an active share in promoting the destruction of episcopacy. His correspondence breathes all the narrow and exclusive bigotry of the presbyterian school. The following passage is so interesting, that, notwithstanding its length, it may find a place place here:—

"The lieutenant of Ireland came but on Monday to town late, on Tuesday rested, on Wednesday came to parliament, but ere night he was caged. Intolerable pride and oppression cries to Heaven for a vengeance. The lower house closed their doors; the speaker kept the keys till the accusation was concluded. Thereafter Mr. Pym went up, with a number at his back, to the higher house; and, in a pretty short speech, did, in the name of the lower house, and in the name of the commons of all England, accuse Thomas earl of Strafford, lord lieutenant of Ireland, of high treason; and required his person to be arrested till probation might be heard so. Mr. Pym and his back were removed. The lords began to consult on that strange and unexpected motion. The word goes in haste to the lord lieutenant, where he was with the king: with speed he comes to the house: he calls rudely at the door: James Maxwell, keeper of the black rod, opens: his lordship, with a proud glooming countenance, makes towards his place at the board head: but at once many bid him void the house; so he is forced, in confusion, to go to the door till he was called. After consultation, being called in, he stands, but is commanded to kneel, and on his knees to hear the sentence. Being on his knees, he is delivered to the keeper of the black rod, to be prisoner till he was cleared of these crimes the house of commons had charged him with. He offered to speak, but was commanded to be gone without a word. In the outer room, James Maxwell required him, as prisoner, to deliver his sword. When he had got it, he cries with a loud voice for his man to carry my lord lieutenant's sword. This done, he makes through a number of people towards his coach; all gazing, no man capping to him, before whom, that morning, the greatest of England would have stood discovered, all crying, 'What is the matter?' He said, 'A small matter, I warrant you.' They replied, 'Yes, indeed, high treason is a small matter.' Coming to the place where he expected his coach, it was not there; so he behoved to return that same way, through a world of gazing people. When at last he had found his coach, and was entering, James Maxwell told him, 'Your lordship is my prisoner, and must go in my coach; and so he behoved to do." P. 217.

duct in Ireland. For though he had begun to act with violence in the court of York, as lord-president of the North, and was charged with having procured a commission investing him with exorbitant power, yet he had too soon left that sphere of dominion for the lieutenancy of Ireland, to give any wide scope for prosecution. But in Ireland it was sufficiently proved that he had arrogated an authority beyond what the crown had ever lawfully enjoyed, and even beyond the example of former viceroys of that island, where the disordered state of society, the frequency of rebellions, and the distance from all control, had given rise to such a series of arbitrary precedents, as would have almost excused any ordinary stretch of power.[1] Notwithstanding this, however, when the managers came to state and substantiate their articles of accusation, though some were satisfied that there was enough to warrant the severest judgment, yet it appeared to many dispassionate men that, even supposing the evidence as to all of them to be legally convincing, they could not, except through a dangerous latitude of construction, be aggravated into treason. The law of England is silent as to conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws, and to govern by a standing army, though as infamous as any treason, could be brought within the statute of Edward III., as a compassing of the king's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported,[2] as well as uttered too much in the heat of passion, to furnish a substantive accusation; and I should rather found my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment. The presumption of history,

[1] The trial of Strafford is best to be read in Rushworth or Nalson. The account in the new edition of the State Trials, I know not whence taken, is curious, as coming from an eye-witness, though very partial to the prisoner; but it can hardly be so accurate as the others. His famous peroration was printed at the time in a loose sheet. It is in the Somers Tracts. Many of the charges seem to have been sufficiently proved, and would undoubtedly justify a severe sentence on an impeachment for misdemeanours. It was not pretended by the managers, that more than two or three of them amounted to treason; but it is the unquestionable right of the commons to blend offences of a different degree in an impeachment.

It has been usually said that the commons had recourse to the bill of the attainder, because they found it impossible to support the impeachment for treason. But St. John positively denies that it was intended to avoid the judicial mode of proceeding. Nalson ii. 162. And what is stronger, the lords themselves voted upon the articles judicially, and not as if they were enacting a legislative measure. As to the famous proviso in the bill of attainder, that the judges should determine nothing to be treason, by virtue of this bill, which they would have determined to be treason otherwise, (on which Hume and many others have relied, to show the consciousness of parliament that the measure was not warranted by the existing law,) it seems to have been introduced in order to quiet the apprehensions of some among the peers, who had gone great lengths with the late government, and were astonished to find that their obedience to the king could be turned into treason against him.

[2] They were confirmed, in a considerable degree, by the evidence of Northumberland and Bristol, and even of Usher and Juxon. Rushw. iv. 455. 559. 586. Baillie, 284. But are they not also exactly according to the principles always avowed and acted upon by that minister, and by the whole phalanx of courtiers, that a king of England does very well to ask his people's consent in the first instance, but, if that is frowardly refused, he has a paramount right to maintain his government by any means?

It may be remarked, that Clarendon says; "the law was clear that less than two witnesses ought not to be received in a case of treason." Yet I doubt whether any one had been allowed the benefit of that law; and the contrary had been asserted repeatedly by the judges.

to whose mirror the scattered rays of moral evidence converge, may be irresistible, when the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this minister appeared so evidently to fall short of high treason, according to the apprehension of that age, as in later times, has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of treason by the court, the statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The judges themselves, on a solemn reference by the house of lords for their opinion, whether some of the articles charged against Strafford amounted to treason, answered unanimously, that upon all which their lordships had voted to be proved, it was their opinion the earl of Strafford did deserve to undergo the pains and penalties of high treason by law.[1] And, as an apology, at least, for this judicial opinion, it may be remarked, that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the peers voted him guilty) does at least approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying war against the king—even without reference to some Irish acts of parliament upon which the managers of the impeachment relied. It cannot be extravagant to assert that if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the statutes, be guilty of the treason called levying war on the king; and that, if we could imagine him to do this by an order from the privy-council or the war-office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanour, or felony, according to circumstances; but would want the generality, which, as the statute has been construed, determines its character to be treason. It is however manifest, that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done, as to bring it within the line of treason, and the evidence is also open to every sort of legal objection. But in that age, the rules of evidence, so scrupulously defined since, were either very imperfectly recognised, or continually transgressed. If then Strafford could be brought within the letter of the law, and was also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation, although he had

[1] Lords' Journals, May 6. Parl. Hist. 757. This opinion of the judges, which is not mentioned by Clarendon, Hume, and other common historians, seems to have cost Strafford his life. It was relied on by some bishops, especially Usher, whom Charles consulted whether he should pass the bill of attainder, though Clarendon puts much worse casuistry into the mouth of Williams. Parr's Life of Usher, p. 45. Hacket's Life of Williams, p. 160. Juxon is said to have stood alone among five bishops, in advising the king to follow his conscience. Clarendon, indeed, does not mention this; though he glances at Usher with some reproach, p. 451.; but the story is as old as the Icon Basilike, in which it is alluded

not offended against what seemed to be the spirit and intention of the statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly, the far more respectable portion of the commons, though only twenty-six peers against nineteen formed the feeble majority on the bill of attainder.[1] It may be observed, that the house of commons acted in one respect with a generosity which the crown had never shown in any case of treason, by immediately passing a bill to relieve his children from the penalties of forfeiture and corruption of blood.

It is undoubtedly a very important problem in political ethics, whether great offences against the commonwealth may not justly incur the penalty of death by a retrospective act of the legislature, which a tribunal restrained by known laws is not competent to inflict. Bills of attainder had been by no means uncommon in England, especially under Henry VIII.; but generally when the crime charged might have been equally punished by law. They are less dangerous than to stretch the boundaries of a statute by arbitrary construction. Nor do they seem to differ at all in principle from those bills of pains and penalties, which in times of comparative moderation and tranquillity, have sometimes been thought necessary to visit some unforeseen and anomalous transgression beyond the reach of our penal code. There are many, indeed, whose system absolutely rejects all such retrospective punishment, either from the danger of giving too much scope to vindictive passion, or on some more abstract principle of justice. Those who may incline to admit that the moral competence of the sovereign power to secure itself by the punishment of a heinous offender, even without the previous warning of law, is not to be denied, except by reasoning, which would shake the foundation of its right to inflict punishment in any case, will still be sensible of the mischief which any departure from stable rules, under the influence of the most public-

[1] The names of the fifty-nine members of the commons, who voted against the bill of attainder, and which were placarded as Straffordians, may be found in the Parliamentary History, and several other books. It is remarkable that few of them were distinguished persons; none so much so as Selden, whose whole parliamentary career, notwithstanding the timidity not very fairly imputed to him, was eminently honourable and independent. But we look in vain for Hyde, Falkland, Colepepper, or Palmer. The first, probably, did not vote; the others may have been in the majority of 204, by whom the bill was passed. Indeed, I have seen a MS. account of the debate, where Falkland and Colepepper appear to have both spoken for it. As to the lords, we have, so far as I know, no list of the nineteen who acquitted Strafford. It did not comprehend Hertford, Bristol, or Holland, who were absent (Nalson, 316.), nor any of the popish lords, whether through fear or any private influence. Lord Clare, his brother-in-law, and lord Saville, a man of the most changeable character, were his prominent advocates during the trial; though Bristol, Hertford, and even Saye desired to have had his life spared (Baillie, 243. 247. 271. 292.); and the earl of Bedford, according to Clarendon, would have come into this. But the sudden and ill-timed death of that eminent peer put an end to the negotiation for bringing the parliamentary leaders into office, wherein it was a main object with the king to save the life of Strafford; entirely, as I am inclined to believe, from motives of conscience and honour, without any views of ever again restoring him to power. Charles had no personal attachment to Strafford; and the queen's dislike to him, (according to Clarendon and Burnet, though it must be owned that Madame de Motteville does not confirm this,) or at least his general unpopularity at court, would have determined the king to lay him aside.

It is said by Burnet that the queen prevailed on Charles to put that strange postscript to his letter to the lords, in behalf of Strafford, "If he must die, it were charity to reprieve him till Saturday;" by which he manifestly surrendered him up, and gave cause to suspect his own sincerity. Doubts have been thrown out by Carte, as to the genuineness of Strafford's celebrated letter, requesting the king to pass the bill of attainder. They do not appear to be founded on much evidence; but it is certain, by the manner in which he received the news, that he did not expect to be sacrificed by his master.

spirited zeal, is likely to produce. The attainder of Strafford could not be justifiable, unless it were necessary; nor necessary, if a lighter penalty would have been sufficient for the public security.

This therefore becomes a preliminary question, upon which the whole mainly turns. It is one which does not seem to admit of a demonstrative answer; but with which we can perhaps deal better than those who lived at that time. Their distrust of the king, their apprehension that nothing less than the delinquent minister's death could ensure them from his return to power, rendered the leaders of parliament obstinate against any proposition of a mitigated penalty. Nor can it be denied that there are several instances in history, where the favourites of monarchs, after a transient exile or imprisonment, have returned, on some fresh wave of fortune, to mock or avenge themselves upon their adversaries. Yet the prosperous condition of the popular party, which nothing but intemperate passion was likely to impair, rendered this contingency by no means probable; and it is against probable dangers that nations should take precautions, without aiming at more complete security than the baffling uncertainties of events will permit. Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation, and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanours, duly proved on impeachment, must be justly inflicted. "I am still the same," said lord Digby, in his famous speech against the bill of attainder, "in my opinions and affections, as unto the earl of Strafford; I confidently believe him to be the most dangerous minister, the most insupportable to free subjects that can be charactered. I believe him to be still that grand apostate to the commonwealth, who must not expect to be pardoned in this world till he be dispatched to the other. And yet, let me tell you, Mr. Speaker, my hand must not be to that despatch." (Parl. Hist. ii. 750.) These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known law, which neither the court's lust of power nor the clamorous indignation of a popular assembly might turn aside. The king, whose conscience was so deeply wounded by his acquiescence in this minister's death, would gladly have assented to a bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution. Though nothing perhaps could have restored a tolerable degree of confidence between Charles and the parliament, it is certain that his resentment and aversion were much aggravated by the painful compulsion they had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war.[1]

[1] See some judicious remarks on this by May, p. 64., who generally shows a good deal of impartiality at this period of history. The violence of individuals, especially when of considerable note, deserves to be remarked, as characteristic of the temper that influenced the house,

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of law, as to pass some censure on this deviation from them in the attainder of lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies, without paying the forfeit of his offences against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow-citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their pre-eminence, their fall has been more destructive, and their punishment more exemplary. Something beyond the retirement or the dismissal of such ministers has seemed necessary to "absolve the gods," and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. If then we blame, in some measure, the sentence against Strafford, it is not for his sake, but for that of the laws on which he trampled, and of the liberty which he betrayed. He died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the bill of attainder, we cannot look upon it as a crime.

The same distrustful temper, blamable in nothing but its excess, drew the house of commons into a measure more unconstitutional than the attainder of Strafford, the bill enacting that they should not be dissolved without their own consent. Whether or not this had been previously meditated by the leaders is uncertain; but the circumstances under which it was adopted display all the blind precipitancy of fear. A scheme for bringing up the army from the north of England to overawe parliament had been discoursed of, or rather in a great measure concerted, by some young courtiers and military men. The imperfection and indefiniteness of the evidence obtained respecting this plot increased, as often happens, the apprehensions of the commons. Yet, difficult as it might be to fix its proper character between a loose project and a deliberate conspiracy, this at least was hardly to be denied, that the king had listened to and approved a proposal of appealing from the representatives of his people to a military force.[1] Their greatest danger

and as accounting for the disgust of moderate men. "Why should he have law himself?" said St. John, in arguing the bill of attainder before the peers, "who would not that others should have any? We indeed give laws to hares and deer, because they are beasts of chase: but we give none to wolves and foxes, but knock them on the head wherever they are found, because they are beasts of prey." Nor was this a mere burst of passionate declaration, but urged as a serious argument for taking away Strafford's life without sufficient grounds of law or testimony. Rushworth, iv. 61. Clarendon, i. 407. Strode told the house that as they had charged Strafford with high treason, it concerned them to charge as conspirators in the same treason all who had before, or should hereafter, plead in that cause. Baillie, 252. This monstrous proposal seems to please the presbyterian bigot. "If this hold," he observes, "Strafford's council will be rare."

[1] Clarendon and Hume of course treat this as a very trifling affair, exaggerated for factious purposes. But those who judge from the evidence of persons unwilling to accuse themselves or the king, and from the natural probabilities of the case, will suspect, or rather be wholly convinced, that it had gone much farther than these writers admit. See the accounts of this plot in Rushworth and Nalson, or in the Parliamentary History. The strongest evidence however, is furnished by Henrietta, whose relation of the circumstances to Madame de Motte-

was a sudden dissolution. The triennial bill afforded, indeed a valuable security for the future. Yet if the present parliament had been broken with any circumstances of violence, it might justly seem very hazardous to confide in the right of spontaneous election reserved to the people by that statute, which the crown would have three years to defeat. A rapid impulse, rather than any concerted resolution, appears to have dictated this hardy encroachment on the prerogative. The bill against the dissolution of the present parliament without its own consent was resolved in a committee on the fifth of May, brought in the next day, and sent to the lords on the seventh. The upper house, in a conference the same day, urged a very wise and constitutional amendment, limiting its duration to the term of two years. But the commons adhering to their original provisions, the bill was passed by both houses on the eighth.[1] Thus, in the space of three days from the first suggestion, an alteration was made in the frame of our polity, which rendered the house of commons equally independent of their sovereign and their constituents; and, if it could be supposed capable of being maintained in more tranquil times, would, in the theory at least of speculative politics, have gradually converted the government into something like a Dutch aristocracy. The ostensible pretext was, that money could not be borrowed on the authority of resolutions of parliament, until some security was furnished to the creditors, that those whom they were to trust should have a permanent existence. This argument would have gone a great way, and was capable of an answer; since the money might have been borrowed on the authority of the whole legislature. But the chief motive, unquestionably, was a just apprehension of the king's intention to overthrow the parliament, and of personal danger to those who had stood forward from his resentment after a dissolution. His ready acquiescence in this bill, far more

ville proves that the king and herself had the strongest hopes from the influence of Goring and Wilmot over the army, by means of which they aimed at saving Strafford's life; though the jealousy of those ambitious intriguers, who could not both enjoy the place to which each aspired, broke the whole plot. Mem. de Motteville, i. 253. Compare with this passage, Percy's letter, and Goring's deposition (Nalson, ii. 286. 294.), for what is said of the king's privity by men who did not lose his favour by their evidence. Mr. Brodie has commented in a long note (iii. 189.) on Clarendon's apparent misrepresentations of this business. But what has escaped the acuteness of this writer is, that the petition to the king and parliament drawn up for the army's subscription, and asserted by Clarendon to have been the only step taken by those engaged in the supposed conspiracy, (though not, as Mr. Brodie too rashly conjectures, a fabrication of his own), is most carelessly referred by him to that period, or to the agency of Wilmot and his coadjutors: having been, in fact, prepared about the July following, at the instigation of Daniel O'Neale, and some others of the royalist party. This is manifest, not only from the allusions it contains to events that had not occurred in the months of March and April, when the plot of Wilmot and Goring was on foot, especially the bill for triennial parliaments, but from evidence given before the house of commons in Oct. 1641, and which Mr. Brodie has published in the appendix to his third volume, though with an inadvertence of which he is seldom guilty, overlooking its date and purport. This, however, is of itself sufficient to display the inaccurate character of Clarendon's history; for I can scarcely ascribe the present incorrectness to design. There are, indeed, so many mistakes as to dates and other matters in Clarendon's account of this plot, that, setting aside his manifest disposition to suppress the truth, we can place not the least reliance on his memory as to those points which we may not be well able to bring to a test.

[1] Journals. Parl. Hist. 784. May, 67. Clarendon. According to Mrs. Hutchinson, p. 97., this bill originated with Mr. Pierpoint. If we should draw any inference from the Journals, sir John Colepepper seems to have been the most prominent of its supporters. Mr. Hyde and lord Falkland were also managers of the conference with the lords. But in sir Ralph Verney's manuscript notes, I find Mr. Whitelock mentioned as being ordered by the house to prepare the bill; which seems to imply that he had moved it, or at least been very forward in it. Yet all these were moderate men.

dangerous than any of those at which he demurred, can only be ascribed to his own shame and the queen's consternation at the discovery of the late plot; and thus we trace again the calamities of Charles to their two great sources; his want of judgment in affairs, and of good faith towards his people.

The parliament had met with as ardent and just an indignation against ecclesiastical as temporal grievances. The tyranny, the folly and rashness of Charles's bishops were still greater than his own. It was evidently an indispensable duty to reduce the overbearing ascendancy of that order, which had rendered the nation, in regard to spiritual dominion, a great loser by the Reformation. They had been so blindly infatuated, as even in the year 1640, amidst all the perils of the times, to fill up the measure of public wrath by enacting a series of canons in convocation. These enjoined, or at least recommended, some of the modern innovations, which, though many excellent men had been persecuted for want of compliance with them, had not got the sanction of authority. They imposed an oath on the clergy, commonly called the et cætera oath, binding them to attempt no alteration in the government of the church by bishops, deans, archdeacons, etc. This oath was by the same authority enjoined to such of the laity as held ecclesiastical offices.[1] The king, however, on the petition of the council of peers at York, directed it not to be taken. The house of commons rescinded these canons with some degree of excess on the other side; not only denying the right of convocation to bind the clergy, which had certainly been exercised in all periods, but actually impeaching the bishops for a high misdemeanour on that account.[2] The lords, in the month of March, appointed a committee of ten earls, ten bishops, and ten barons, to report upon the innovations lately brought into the church. Of this committee Williams was chairman. But the spirit which now possessed the commons was not to be exorcised by the sacrifice of Laud and Wren, or even by such inconsiderable alterations as the moderate bishops were ready to suggest.[3]

There had always existed a party, though by no means co-extensive with that bearing the general name of puritan, who retained an insuperable aversion to the whole scheme of episcopal discipline, as inconsistent with the ecclesiastical parity they believed to be enjoined by the apostles. It is not easy to determine what proportion these bore to the community. They were certainly at the opening of the parliament by far the less numerous, though an active and increasing party. Few of the house of commons, according to Clarendon and the best contemporary writers, looked to a destruction of the existing hierarchy.[4] The more plausible scheme was one, which had the sanction of Usher's

[1] Neal, p. 632., has printed these canons imperfectly. They may be found at length in Nalson, i. 542. It is remarkable that the seventh canon expressly denies a corporal presence in the eucharist, which is quite contrary to what Laud had asserted in his speech in the star-chamber. His influence does not seem to have wholly predominated in this particular canon, which is expressed with a moderation of which he was incapable.

[2] Clarendon. Parl. Hist. 678. 896. Neal, 647. 720. These votes as to the canons, however, were carried *nem. con.* Journ. 16th Dec. 1640.

[3] Neal, 709. Laud and Wren were both impeached Dec. 18.; the latter entirely for introducing superstitions. Parl. Hist. 861. He lay in the Tower till 1659.

[4] Neal says that the major part of the parliamentarians at the beginning of the war were for moderated episcopacy, (ii. 4.), and asserts the same in another place (i. 715.) of the puritans, in contradiction of Rapin. "How this will go," says Baillie, in April, 1641, "the Lord knows;

learned judgment, and which Williams was said to favour, for what was called a moderate episcopacy; wherein the bishop, reduced to a sort of president of his college of presbyters, and differing from them only in rank, not in species (gradu, non ordine), should act, whether in ordination or jurisdiction, by their concurrence.[1] This intermediate form of church-government would probably have contented the popular leaders of the commons, except two or three, and have proved acceptable to the nation. But it was hardly less offensive to the Scottish presbyterians, intolerant of the smallest deviation from their own model, than to the high-church episcopalians; and the necessity of humouring that proud and prejudiced race of people, who began already to show that an alteration in the church of England would be their stipulated condition for any assistance they might afford to the popular party, led the majority of the house of commons to give more countenance than they sincerely intended to a bill, preferred by what was then called the root and branch party, for the entire abolition of episcopacy. This party, composed chiefly of presbyterians, but with no small admixture of other sectaries, predominated in the city of London. At the instigation of the Scots commissioners, a petition against episcopal government with 15,000 signatures was presented early in the session (Dec. 11. 1640), and received so favourably as to startle those who had borne a good affection to the church.[2] This gave rise to the first difference that was expressed in parliament; Digby speaking warmly against the reference of this petition to a committee, and Falkland, though strenuous for reducing the prelates' authority, showing much reluctance to abolish their order. (Rushworth. Nalson.) A bill was however brought in by sir Edward Dering, an honest but not very enlightened or consistent man, for the utter extirpation of episcopacy, and its second reading carried on a division by 139 to 108.[3] This, no doubt, seems to show the anti-episcopal party to have been stronger than Clarendon admits. Yet I suspect that the greater part of those who voted for it did not intend more than to intimidate the bishops. Petitions very numerously signed, for the maintenance of episcopal government, were presented from several counties;[4] nor is

all are for the creating of a kind of presbytery, and for bringing down the bishops in all things spiritual and temporal, so low as can be with any subsistence; but their utter abolition, which is the only aim of the most godly, is the knot of the question." i. 245.

[1] Neal, 666. 672. 713. Collier, 805. Baxter's Life, p. 62. The ministers' petition, as it was called, presented Jan. 23. 1641, with the signature of 700 beneficed clergymen, went to this extent of reformation. Neal, 679.

[2] Parl. Hist. 673. Clarendon, i. 356. Baillie's Letter, 218. &c. Though sanguine as to the progress of his sect, he admits that it was very difficult to pluck up episcopacy by the roots; for this reason they did not wish the house to give a speedy answer to the city petition, p. 241. It was carried by 36 or 37 voices, he says, to refer it to the committee of religion, p. 245. No division appears on the Journals.

The whole influence of the Scots commissioners was directed to this object; as not only Baillie's Letters, but those of Johnstone of Wariston (Dalrymple's Memorials of James and Charles I., ii. 114. &c.) show. Besides their extreme bigotry, which was the predominant motive, they had a better apology for interfering with church-government in England, with which the archbishop had furnished them: it was the only sure means of preserving their own.

[3] Parl. Hist. 814. 822. 828. Clarendon tells us, that being chairman of the committee to whom this bill was referred, he gave it so much interruption, that no progress could be made before the adjournment. The house came, however, to a resolution, that the taking away the offices of archbishops, bishops, chancellors, and commissaries out of this church and kingdom, should be one clause of the bill. June 12. Commons' Journals.

[4] Lord Hertford presented one to the lords, from Somersetshire, signed by 14,350 freeholders and inhabitants. Nalson, ii. 727. The Cheshire petition, for preserving the Common Prayer,

it, I think, possible to doubt that the nation sought only the abridgement of that coercive jurisdiction and temporal power, by which the bishops had forfeited the reverence due to their function, as well as that absolute authority over presbyters, which could not be reconciled to the customs of the primitive church.[1] This was the object both of the act abolishing the high-commission, which, by the largeness of its expressions, seemed to take away all coercive jurisdiction from the ecclesiastical courts, and of that for depriving the bishops of their suffrages among the peers; which, after once being rejected by a large majority of the lords in June, 1641, passed into a law in the month of February following, and was the latest concession that the king made before his final appeal to arms.[2]

This was hardly perhaps a greater alteration of the established constitution than had resulted from the suppression of the monasteries under Henry; when, by the fall of the mitred abbots, the secular

was signed by near 10,000 hands. Id. 758. I have a collection of those petitions now before me, printed in 1642, from thirteen English and five Welsh counties, and all very numerously signed. In almost every instance, I observe, they thank the parliament for putting a check to innovations and abuses, while they deprecate the abolition of episcopacy and the liturgy. Thus it seems that the presbyterians were very far from having the nation on their side. The following extract from the Somersetshire petition is a good sample of the general tone: "For the present government of the church we are most thankful to God, believing it in our hearts to be the most pious and the wisest that any people or kingdom upon earth hath been withal since the apostles' days; though we may not deny, but through the frailty of men and corruption of times, some things of ill consequence, and other needless, are stolen or thrust into it; which we heartily wish may be reformed, and the church restored to its former purity. And to the end it may be the better preserved from present and future innovation, we wish the wittingly and maliciously guilty, of what condition soever they be, whether bishops or inferior clergy, may receive condign punishment. But for the miscarriage of governors, to destroy the government, we trust it shall never enter into the hearts of this wise and honourable assembly."

[1] The house came to a vote on July 17., according to Whitelock, p. 46., in favour of Usher's scheme, that each county should be a diocese, and that there should be a governing college or presbytery, consisting of twelve, under the presidency of a bishop: sir E. Dering spoke in favour of this, though his own bill went much farther. Nalson, ii. 294. Neal, 703. I cannot find the vote in the journals; it passed, therefore, I suppose in the committee, and was not reported to the house.

[2] Parl. Hist. 774. 794. 817. 910. 1087. The lords had previously come to resolutions, that bishops should sit in the house of lords, but not in the privy council, nor be in any commission of the peace. Id. 814.

The king was very unwilling to give his consent to the bill excluding the bishops from parliament, and was, of course, dissuaded by Hyde from doing so. He was then at Newmarket, on his way to the north, and had nothing but war in his head. The queen, however, and sir John Colepepper, prevailed on him to consent. Clarendon History, ii. 247. (1826). Life, 51. The queen could not be expected to have much tenderness for a protestant episcopacy; and it is to be said in favour of Colepepper's advice, who was pretty indifferent in ecclesiastical matters, that the bishops had rendered themselves odious to many of those who wished well to the royal cause. See the very remarkable conversation of Hyde with sir Edward Verney, who was killed at the battle of Edgehill, where the latter declares his reluctance to fight for the bishops, whose quarrel he took it to be, though bound by gratitude not to desert the king. Clarendon's Life, p. 68.

This author represents lord Falkland as having been misled by Hampden to take an unexpected part in favour of the first bill for excluding the bishops from parliament. "The house was so marvellously delighted to see the two inseparable friends divided in so important a point, that they could not contain from a kind of rejoicing; and the more because they saw Mr. Hyde was much surprised with the contradiction, as in truth he was, having never discovered the least inclination in the other towards such a compliance." i. 413. There is, however, an earlier speech of Falkland in print, against the London petition; wherein, while objecting to the abolition of the order, he intimates his willingness to take away their votes in parliament, with all other temporal authority. Speeches of the Happy Parliament, p. 188. (published in 1641.) Johnstone of Wariston, says there were but four or five votes against taking away civil places and seats in parliament from the bishops. Dalrymple's Mems. ii. 116. But in the journals of the commons, 10th Mar. 1640-1, it is said to be resolved, after a long and mature debate, that the legislative power of bishops is a hindrance to their function.

peers acquired a preponderance in number over the spiritual which they had not previously enjoyed. It was supported by several persons, especially lord Falkland, by no means inclined to subvert the episcopal discipline; whether from a hope to compromise better with the opposite party by this concession, or from a sincere belief that the bishops might be kept better to the duties of their function by excluding them from civil power. Considered generally, it may be reckoned a doubtful question in the theory of our government, whether the mixture of this ecclesiastical aristocracy with the house of lords is advantageous or otherwise to the public interests, or to those of religion. Their great revenues, and the precedence allotted them, seem naturally to place them on this level; and the general property of the clergy, less protected than that of other classes against the cupidity of an administration or a faction, may perhaps, require this peculiar security. In fact the disposition of the English to honour the ministers of the church, as well as to respect the ancient institutions of their country, has usually been so powerful, that the question would hardly have been esteemed dubious, if the bishops themselves (I speak of course with such limitations as the nature of the case requires) had been at all times sufficiently studious to maintain a character of political independence, or even to conceal a spirit of servility, which the pernicious usage of continual translations from one see to another, borrowed like many other parts of our ecclesiastical law from the most corrupt period of the church of Rome, has had so manifest a tendency to engender.

This spirit of ecclesiastical rather than civil democracy, was the first sign of the approaching storm that alarmed the Hertfords and Southamptons, the Hydes and Falklands. Attached to the venerable church of the English reformation, they were loth to see the rashness of some prelates avenged by her subversion, or a few recent innovations repressed by incomparably more essential changes. Full of regard for established law, and disliking the puritan bitterness, aggravated as it was by long persecution, they revolted from the indecent devastation committed in churches by the populace, and from the insults which now fell on the conforming ministers. The lords early distinguished their temper as to those points by an order on the 16th of January for the performance of divine service according to law, in consequenee of the tumults that had been caused by the heated puritans under pretence of abolishing innovations. Little regard was shown to this order;[1] but it does not appear that the commons went farther on the opposite side, than to direct some ceremonial novelties to be discontinued, and to empower one of their members, sir Robert Harley, to take away all pictures, crosses, and superstitious figures within churches or without.[2] But this order, like many of their other acts, was a manifest encroachment on the executive power of the crown.[3]

[1] "The higher house," says Baillie, "have made an order, which was read in the churches that none presume of their own head to alter any customs established by law: this procured ordinance does not discourage any one." P. 237. Some rioters, however, who had pulled down rails about the altar, &c., were committed by order of the lords in June. Nalson, ii. 275.

[2] Parl. Hist. 868. By the hands of this zealous knight fell the beautiful crosses at Charing and Cheap, to the lasting regret of all faithful lovers of antiquities and architecture.

[3] Parl. Hist. 907. Commons' Journals, Sept. 1. 1641. It was carried at the time on a

It seems to have been about the time of the summer recess, during the king's absence in Scotland, that the apprehension of changes in church and state far beyond what had been dreamed of at the opening of parliament, led to a final schism in the constitutional party.[1] Charles, by abandoning his former advisers, and yielding, with just as much reluctance as displayed the value of the concession, to a series of laws that abridged his prerogative, had recovered a good deal of the affection and confidence of some, and gained from others that sympathy which is seldom withheld from undeserving princes in their humiliation. Though the ill-timed death of the earl of Bedford in May had partly disappointed an intended arrangement for bringing the popular leaders into office, yet the appointments of Essex, Holland, Saye, and St. John from that party were apparently pledges of the king's willingness to select his advisers from their ranks; whatever cause there might be to suspect that their real influence over him would be too inconsiderable.[2] Those who were still excluded, and who distrusted the king's intentions as well towards themselves as the public cause, of whom Pym and Hampden, with the assistance of St. John, though actually solicitor-general, were the chief, found no better means of keeping alive the animosity that was beginning to subside, than by framing the Remonstrance on the state of the kingdom, presented to the king in November 1641. This being a recapitulation of all the grievances and misgovernment that had existed since his accession, which his acquiescence in so many measures of redress ought, according to the common courtesy

division by 55 to 37, that the committee "should propound an addition to this order for preventing all contempt and abuse of the Book of Common Prayer, and all tumultuous disorders that might arise in the church thereupon." This is a proof that the church party were sometimes victorious in the house. But they did not long retain this casual advantage. For the lords having sent down a copy of their order of 16th Jan. above mentioned, requesting the commons' concurrence, they resolved, Sept. 9. "that the house do not consent to this order; it being thought unreasonable at this time to urge the severe execution of the said laws." They contented themselves with "expecting that the commons of this realm do, in the mean time, quietly attend the reformation intended, without any tumultuous disturbance of the worship of God and peace of the realm." Nalson, ii. 484.

[1] May, p. 75. See this passage, which is very judicious. The disunion had, however, in some measure begun not long after the meeting of parliament; the court wanted, in Dec., 1640, to have given the treasurer's staff to Hertford, whose brother was created a peer by the title of lord Seymour. Bedford was the favourite with the commons for the same office and would doubtless have been a fitter man at the time, notwithstanding the other's eminent virtues. Sidney Letters, ii. 665. 666. See also what Baillie says of the introduction of seven lords, "all commonwealth's men," into the council, though, as generally happens, he is soon discontented with some of them. P. 246. 247. There was even some jealousy of Saye, as favouring Strafford.

[2] Whitelocke, p. 46. Bedford was to have been lord treasurer, with Pym, whom he had brought into parliament for Tavistock, as his chancellor of the exchequer; Hollis secretary of state. Hampden is said, but not perhaps on good authority, to have sought the office of governor to the prince of Wales; which Hume, not very candidly, brings as a proof of his ambition. It seems probable that if Charles had at that time (May, 1641) carried these plans into execution, and ceased to listen to the queen, or to those persons about his bed-chamber, who were perpetually leading him astray, he would have escaped the exorbitant demands which were afterwards made upon him, and even saved his favourite episcopacy. But after the death of the earl of Bedford, who had not been hostile to the church, there was no man of rank in that party whom he liked to trust; Northumberland having acted, as he thought, very ungratefully, Saye being a known enemy to episcopacy, and Essex, though of the highest honour, not being of a capacity to retain much influence over the leaders of the other house. Clarendon insinuates that, even as late as Mar. 1642, the principal patriots, with a few exceptions, would have been content with coming themselves into power under the king, and on this condition would have left his remaining prerogative untouched (ii. 326.). But it seems more probable that after the accusation of the five members, no measure of this kind would have been of any service to Charles.

due to sovereigns, to have cancelled, was hardly capable of answering any other purpose than that of re-animating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope from Charles's proud and hasty temper, that he would reply in such a tone as would more exasperate the commons. But he had begun to use the advice of judicious men, Falkland, Hyde, and Colepepper, and reined in his natural violence so as to give his enemies no advantage over him.

The jealousy which nations ought never to lay aside was especially required towards Charles, whose love of arbitrary dominion was much better proved than his sincerity in relinquishing it. But if he were intended to reign at all, and to reign with any portion either of the prerogatives of an English king, or the respect claimed by every sovereign, the Remonstrance of the commons could but prolong an irritation incompatible with public tranquillity. It admits indeed of no question, that the schemes of Pym, Hampden, and St. John, already tended to restrain the king's personal exercise of any effective power, from a sincere persuasion that no confidence could ever be placed in him, though not to abolish the monarchy, or probably to abridge in the same degree the rights of his successor. Their Remonstrance was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the further progress of their endeavours, but, as they would allege, might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty. It was carried in a full house by the small majority of 159 to 148.[1] So much was it deemed a trial of strength, that Cromwell declared after the division that had the question been lost, he would have sold his estate, and retired to America.

It may be thought rather surprising that with a house of commons so nearly balanced as they appeared on this vote, the king should have new demands that annihilated his authority made upon him, and have

[1] Commons' Journs., 22nd Nov. On a second division the same night, whether the Remonstrance should be printed, the popular side lost it by 124 to 101. But on 15th Dec. the printing was carried by 135 to 83. Several divisions on important subjects about this time show that the royalist minority was very formidable. But the attendance, especially on that side, seems to have been irregular; and in general, when we consider the immense importance of these debates, we are surprised to find the house so deficient in numbers as many divisions show it to have been. Clarendon frequently complains of the supineness of his party; a fault invariably imputed to their friends by the zealous supporters of established authority, who forget that sluggish, lukewarm, and thoughtless tempers must always exist, and that such will naturally belong to their side. I find in the short pencil notes taken by sir Ralph Verney, with a copy of which I have been favoured by Mr. Serjeant D'Oyly, the following entry on the 7th of Aug., before the king's journey to Scotland:—"A remonstrance to be made how we found the kingdom and the church, and how the state of it now stands." This is not adverted to in Nalson, nor in the Journals at this time. But Clarendon says, in a suppressed passage, vol ii. App. 591., that "at the beginning of the parliament, or shortly after, when all men were inflamed with the pressures and illegalities which had been exercised upon them, a committee was appointed to prepare a remonstrance of the state of the kingdom, to be presented to his majesty, in which the several grievances might be recited; which committee had never brought any report to the house; most men conceiving, and very reasonably, that the quick and effectual progress his majesty made for the reparation of those grievances, and prevention of the like for the future, had rendered that work needless. But as soon as the intelligence came of his majesty being on his way from Scotland towards London, that committee was, with great earnestness and importunity, called upon to bring in the draft of such remonstrance," &c. I find a slight notice of this origin of the remonstrance in the Journals, Nov. 17. 1640.

In another place, also suppressed in the common editions, Clarendon says:—"This debate held many hours, in which the framers and contrivers of the declaration said very little, or

found a greater majority than had voted the remonstrance ready to oppose him by arms; especially as that paper contained little but what was true, and might rather be censured as an ill-timed provocation than an encroachment on the constitutional prerogative. But there were circumstances, both of infelicity and misconduct, which aggravated that distrust whereon every measure hostile to him was grounded. His imprudent connivance at popery, and the far more reprehensible encouragement given to it by his court, had sunk deep in the hearts of his people. His ill-wishers knew how to irritate the characteristic sensibility of the English on this topic. The queen, unpopular on the score of her imputed arbitrary counsels, was odious as a maintainer of idolatry.[1] The lenity shown to convicted popish priests, who, though liable to capital punishment, had been suffered to escape with sometimes a very short imprisonment, was naturally (according to the maxims of those times) treated as a grievance by the commons, who petitioned for the execution of one Goodman and others in similar circumstances, perhaps in the hope that the king would attempt to shelter them. But he dexterously left it to the house whether they should die or not; and none of them actually suffered.[2] Rumours of pretended conspiracies by the catholics were perpetually in circulation, and rather unworthily encouraged by the chiefs of the commons. More substantial motives for alarm appeared to arise from the obscure transaction in Scotland, commonly called the Incident, which looked so like a concerted design against the two great leaders of the constitutional party, Hamilton and Argyle, that it was not unnatural to anticipate something similar in England.[3] In the midst of these apprehensions, as if to justify every suspicion and every severity, burst out the Irish rebellion with its attendant massacre. Though nothing could be more unlikely in itself, or less supported by proof, than the king's connivance at this calamity, from which every man of common understanding could only expect

answered any reasons that were alleged to the contrary; the only end of passing it, which was to incline the people to sedition, being a reason not to be given; but called still for the question, presuming their number, if not their reason, would serve to carry it; and after two in the morning (for so long the debate continued, if that can be called a debate, when those only of one opinion argued,) &c. it was put to the question." What a strange memory this author had! I have now before me sir Ralph Verney's MS. note of the debate, whence it appears that Pym, Hampden, Hollis, Glyn, and Maynard, spoke in favour of the remonstrance; nay, as far as these brief memoranda go, Hyde himself seems not to have warmly opposed it.

[1] The letters of sir Edward Nicholas, published as a supplement to Evelyn's Diary, show how generally the apprehensions of popish influence were entertained. It is well for superficial pretenders to lay these on calumny and misrepresentation: but such as have read our historical documents, know that the royalists were almost as jealous of the king in this respect as the puritans. See what Nicholas says to the king himself, p. 22. 25. 29. Indeed he gives several hints to a discerning reader, that he was not satisfied with the soundness of the king's intentions, especially as to O'Neale's tampering with the army, p. 77. Nicholas, however, became afterwards a very decided supporter of the royal cause; and in the council at Oxford, just before the treaty of Uxbridge, was the only one who voted according to the king's wish, not to give the members at Westminster the appellation of a parliament. P. 90.

[2] The king's speech about Goodman, Baillie tells us, gave great satisfaction to all: "with *much humming* was it received." P. 240. Goodman petitioned the house that he might be executed, rather than become the occasion of differences between the king and parliament. This was earlier in time, and at least equal in generosity to lord Strafford's famous letter; or perhaps rather more so, since, though it turned out otherwise, he had greater reason to expect that he should be taken at his word. It is remarkable, that the king says in his answer to the commons, that no priest had been executed merely for religion either by his father or Elizabeth, which, though well meant, was quite untrue. Parl. Hist. 712. Butler, ii. 5.

[3] See what Clarendon says of the effect produced at Westminster by the Incident, in one of the suppressed passages. Vol. ii. App. p. 575. ed. 1826.

what actually resulted from it, a terrible aggravation of his difficulties, yet with that distrustful temper of the English, and their jealous dread of popery, he was never able to conquer their suspicions that he had either instigated the rebellion, or was very little solicitous to suppress it; suspicions indeed, to which, however ungrounded at this particular period, some circumstances that took place afterwards gave an apparent confirmation.[1]

It was, perhaps, hardly practicable for the king, had he given less real excuse for it than he did, to lull that disquietude which so many causes operated to excite. The most circumspect discretion of a prince in such a difficult posture cannot restrain the rashness of eager adherents, or silence the murmurs of a discontented court. Those nearest Charles's person, and who always possessed too much of his confidence, were notoriously and naturally averse to the recent changes. Their threatening but idle speeches, and impotent denunciations of resentment, conveyed with malignant exaggeration among the populace, provoked those tumultuous assemblages, which afforded the king no bad pretext for withdrawing himself from a capital where his personal dignity was so little respected.[2] It is impossible however to deny that he gave by his own conduct no trifling reasons for suspicion, and last of all by the appointment of Lunsford to the government of the Tower; a choice for which, as it would never have been made from good motives, it was natural to seek the worst.[3] But the single false step which rendered his affairs irretrievable by any thing short of civil war, and placed all reconciliation at an insuperable distance, was his

[1] Nalson, ii. 788. 792. 804. Clarendon, ii. 84. The queen's behaviour had been extraordinarily imprudent from the very beginning. So early as Feb. 17. 1641, the French ambassador writes word:—"La reine d'Angleterre dit publiquement qu'il y a une trêve arrestée pour trois ans entre la France et l'Espagne, et que ces deux couronnes vont unir leurs forces pour la défendre et pour venger les catholiques." Mazure, Hist. de la Révol. en 1688, ii. 419. She was very desirous to go to France, doubtless to interest her brother and the queen in the cause of royalty. Lord Holland, who seems to have been the medium between the parliamentary chiefs and the French court, signified how much this would be dreaded by the former; and Richelieu took care to keep her away, of which she bitterly complained. This was in February. Her majesty's letter, which M. Mazure has been malicious enough to print verbatim, is a curious specimen of orthography. Id. p. 416. Her own party were equally averse to this step, which was chiefly the effect of cowardice; for Henrietta was by no means the high-spirited woman that some have fancied. It it well known that a few months afterwards she pretended to require the waters of Spa for her health; but was induced to give up her journey.

[2] Clarendon, ii. 81. This writer intimates that the Tower was looked upon by the court as a bridle upon the city.

[3] Nalson, ii. 710., and other writers, ascribe this accusation of lord Kimbolton in the peers, and of the five members, as they are commonly called, Pym, Hollis, Hampden, Haskerig, and Strode, to secret information obtained by the king in Scotland of their former intrigues with that nation. This is rendered in some measure probable by a part of the written charge preferred by the attorney-general before the house of lords, and by expressions that fell from the king; such as, "it was a treason which they should all thank him for discovering." Clarendon, however, hardly hints at this; and gives at least a hasty reader to understand that the accusation was solely grounded on their parliamentary conduct. Probably he was aware that the act of oblivion passed last year afforded a sufficient legal defence to the charge of corresponding with the Scots in 1640. In my judgment, they had an abundant justification in the eyes of their country for intrigues which, though legally treasonable, had been the means of overthrowing despotic power. The king and courtiers had been elated by the applause he received when he went into the city to dine with the lord mayor on his return from Scotland; and Madame de Motteville says plainly, that he determined to avail himself of it in order to seize the leaders in parliament. (i. 264.)

Nothing could be more irregular than the mode of Charles's proceedings in this case. He sends a message by the serjeant-at-arms to require of the speaker that five members should be given up to him on a charge of high treason; no magistrate's or counsellor's warrant appeared; it was the king acting singly, without the intervention of the law. It is idle to allege, like

attempt to seize the five members within the walls of the house; an evident violation, not of common privilege, but of all security for the independent existence of parliament in the mode of its execution, and leading to a very natural though perhaps mistaken surmise, that the charge itself of high treason made against these distinguished leaders, without communicating any of its grounds, had no other foundation than their parliamentary conduct. And we are in fact warranted by the authority of the queen herself to assert that their aim in this most secret enterprise was to strike terror into the parliament, and regain the power that had been wrested from their grasp.[1] It is unnecessary

Clarendon, that privilege of parliament does not extend to treason; the breach of privilege, and of all constitutional law, was in the mode of proceeding. In fact, the king was guided by bad private advice, and cared not to let any of his privy council know his intention, lest he should encounter opposition.

The following account of the king's coming to the house on this occasion is copied from the pencil notes of sir R. Verney. It has been already printed by Mr. Hatsell (Precedents, iv. 106.), but with no great correctness. What sir R. V. says of the transactions of Jan. 3. is much the same as we read in the Journals. He thus proceeds:—"Tues. 4. Jan., 164½. The five gentlemen which were to be accused came into the house, and there was information that they should be taken away by force. Upon this the house sent to the lord mayor, aldermen, and common council, to let them know how their privileges were like to be broken, and the city put into danger, and advised them to look to their security.

"Likewise some members were sent to the inns of court to let them know how they heard they were tampered withal to assist the king against them, and therefore they desired them not to come to Westminster.

"Then the house adjourned till one of the clock. As soon as the house met again, it was moved, considering there was an intention to take these five members away by force, to avoid all tumult, let them be commanded to absent themselves; upon this the house gave them leave to absent themselves, but entered no order for it. And then the five gentlemen went out of the house.

"A little after the king came with all his guard, and all his pensioners, and two or three hundred soldiers and gentlemen. The king commanded the soldiers to stay in the hall, and sent us word he was at the door. The speaker was commanded to sit still with the mace lying before him, and then the king came to the door, and took the palsgrave in with him, and commanded all that came with him upon their lives not to come in. So the doors were kept open, and the earl of Roxburgh stood within the door leaning upon it. Then the king came upwards towards the chair with his hat off, and the speaker stepped out to meet him; then the king stepped up to his place, and stood upon the step, but sat not down in the chair.

"And after he had looked a great while he told us he would not break our privileges, but treason had no privilege; he came for those five gentlemen, for he expected obedience yesterday, and not an answer. Then he called Mr. Pym and Mr. Hollis by name, but no answer was made. Then he asked the speaker if they were here, or where they were? Upon this the speaker fell on his knees, and desired his excuse, for he was a servant to the house, and had neither eyes nor tongue to see or say any thing, but what they commanded him: then the king told him he thought his own eyes were as good as his, and then said his birds had flown, but he did expect the house should send them to him; and if they did not he would seek them himself, for their treason was foul, and such a one as they would all thank him to discover: then he assured us they should have a fair trial; and so went out, pulling off his hat till he came to the door.

"Upon this the house did instantly resolve to adjourn till to-morrow at one of the clock, and in the interim they might consider what to do.

"Wed., 5th Jan. 164½.

"The house ordered a committee to sit at Guildhall in London, and all that would come had voices. This was to consider and advise how to right the house in point of privilege broken by the king's coming yesterday with a force to take members out of our house. They allowed the Irish committee to sit, but would meddle with no other business till this were ended; they acquainted the lords in a message with what they had done, and then they adjourned the house till Tuesday next."

The author of these memoranda in pencil, which extend, at intervals of time, from the meeting of the parliament to April, 1642, though mistaken by Mr. Hatsell for sir Edmund Verney, member for the county of Bucks, and killed at the battle of Edgehill, has been ascertained by my learned friend, Mr. serjeant D'Oyly, to be his brother, sir Ralph, member for Aylesbury. He continued at Westminster, and took the covenant; but afterwards retired to France, and was disabled to sit by a vote of the house, Sept. 22. 1645.

[1] Mém. de Motteville, i. 264. Clarendon has hardly been ingenuous in throwing so much of the blame of this affair on lord Digby. Indeed, he insinuates in one place, that the queen's

to dwell on a measure so well known, and which scarce any of the king's advocates have defended. The only material subject it affords for reflection is, how far the manifest hostility of Charles to the popular chiefs might justify them in rendering it harmless by wresting the sword out of his hands. No man doubtless has a right, for the sake only of his own security, to subvert his country's laws, or to plunge her into civil war. But Hampden, Hollis, and Pym might not absurdly consider the defence of English freedom bound up in their own, assailed as they were for its sake and by its enemies. It is observed by Clarendon, that "Mr. Hampden was much altered after this accusation; his nature and courage seeming much fiercer than before." And it is certain that both he and Mr. Pym were not only most forward in all the proceedings which brought on the war, but among the most implacable opponents of all overtures towards reconciliation; so that although, both dying in 1643, we cannot pronounce with absolute certainty as to their views, there can be little room to doubt that they would have adhered to the side of Cromwell and St. John, in the great separation of the parliamentary party.

The noble historian confesses that not Hampden alone, but the generality of those who were beginning to judge more favourably of the king, had their inclinations alienated by this fatal act of violence. (P. 159. 180.) It is worthy of remark that each of the two most striking encroachments on the king's prerogative sprung directly from the suspicions roused of an intention to destroy their privileges; the bill perpetuating the parliament having been hastily passed on the discovery of Percy's and Jermyn's conspiracy, and the present attempt on the five members inducing the commons to insist peremptorily on vesting the command of the militia in persons of their own nomination; a security indeed, at which they had been less openly aiming from the time of that conspiracy, and particularly of late.[1] Every one knows

apprehension of being impeached, with which some one in the confidence of the parliamentary leaders (either lord Holland or lady Carlisle) had inspired her, led to the scheme of anticipating them. (ii. 232.) It has been generally supposed that lady Carlisle gave the five members a hint to absent themselves. The French ambassador, however, Montereuil, takes the credit to himself.—"J'avois prévenu mes amis, et ils s'étoient mis en sûreté." Mazure, p. 429. It is probable that he was in communication with that intriguing lady.

[1] The earliest proof that the commons gave of their intention to take the militia into their hands was immediately upon the discovery of Percy's plot, 5th May, 1641, when an order was made that the members of each county, &c., should meet to consider in what state the places for which they serve are in respect of arms and ammunition, and whether the deputy lieutenants and lord lieutenants are persons well affected to the religion and the public peace, and to present their names to the house, and who are the governors of forts and castles in their counties. Commons' Journals. Not long afterwards, or at least before the king's journey to Scotland, sir Arthur Haslerig, as Clarendon informs us, proposed a bill for settling the militia in such hands as they should nominate, which was seconded by St. John, and read once, "but with so universal a dislike, that it was never called upon a second time." Clarendon, i. 488. I can find nothing of this in the Journals, and believe it to be one of the anachronisms into which this author has fallen, in consequence of writing at a distance from authentic materials. The bill to which he alludes must, I conceive, be that brought in by Haslerig long after, 7th Dec. 1641, not, as he terms it, for settling the militia, but for making certain persons, leaving their names in blank, "lords general of all the forces within England and Wales, and lord admiral of England." The persons intended seem to have been Essex, Holland, and Northumberland. The commons had for some time planned to give the two former earls a supreme command over the trained bands north and south of Trent (Journals, Nov, 15. and 16.); which was afterwards changed into the scheme of lord lieutenants of their own nomination for each county. The bill above mentioned having been once read, it was moved, that it be rejected, which was negatived by 158 to 125. Commons' Journ. 7th Dec. Nalson, ii. 719., has made a mistake about these numbers. The bill, however, was laid aside, a new plan having been

that this was the grand question upon which the quarrel finally rested; but it may be satisfactory to show more precisely than our historians have generally done, what was meant by the power of the militia, and what was the exact ground of dispute in this respect between Charles I. and his parliament.

The military force which our ancient constitution had placed in the hands of its chief magistrate, and those deriving authority from him, may be classed under two descriptions; one principally designed to maintain the king's and the nation's rights abroad, the other to protect them at home from attack or disturbance. The first comprehends the tenures by knight's service, which, according to the constant principles of a feudal monarchy, bound the owners of lands thus held from the crown, to attend the king in war, within or without the realm, mounted and armed, during the regular term of service. Their own vassals were obliged by the same law to accompany them. But the feudal service was limited to forty days, beyond which time they could be retained only by their own consent, and at the king's expense. The military tenants were frequently called upon in expeditions against Scotland, and last of all in that of 1640; but the short duration of their legal service rendered it of course nearly useless in continental warfare. Even when they formed the battle, or line of heavy-armed cavalry, it was necessary to complete the army by recruits of foot-soldiers, whom feudal tenure did not regularly supply, and whose importance was soon made sensible by their skill in our national weapon, the bow. What was the extent of the king's lawful prerogative for two centuries or more after the conquest as to compelling any of his subjects to serve him in foreign war, independently of the obligations of tenure, is a question scarcely to be answered; since, knowing so imperfectly the boundaries of constitutional law in that period, we have little to guide us but precedents; and precedents, in such times, are apt to be much more records of power than of right. We find certainly several instances under Edward I. and Edward II. sometimes of proclamations to the sheriffs, directing them to notify to all persons of sufficient estate, that they must hold themselves ready to attend the king whenever he should call on them, sometimes of commissions to particular persons in different counties, who are enjoined to choose and array a competent number of horse and foot for the king's service.[1] But these levies being of course vexatious to the people, and contrary at least to the spirit of those immunities which, under the shadow of

levised. It was ordered, 31st Dec. 1641, "that the house be resolved into a committee on Mon. next (Jan. 3.), to take into consideration the militia of the kingdom." That Mon., Jan 3., was the famous day of the king's message about the five members; and on Jan. 13. a declaration for putting the kingdom in a state of defence passed the commons, by which "all officers, magistrates, &c., were enjoined to take care that no soldiers be raised, nor any castles or arms given up, *without his majesty's pleasure, signified by both houses of parliament.*" Commons' Journs. Parl. Hist. 1035. The lords at the time refused to concur in this declaration, which was afterwards changed into the ordinance for the militia; but 32 peers signed a protest, Id. 1049., and the house not many days afterwards came to an opposite vote, joining with the commons in their demand of the militia. Id. 1072. 1091.

[1] Rymer, sub Edw. I. et II. passim. Thus, in 1297, a writ to the sheriff of Yorkshire directs him to make known to all, qui habent 20 libratas terræ et reditus per annum, tam illis qui non tenent de nobis in capite quam illis qui tenent, ut de equis et armis sibi provideant et se probarent indilatè; ita quod sint prompti et parati ad veniendum ad nos et eundum cum propriâ personâ nostrâ, pro defensione ipsorum et totius regni nostri prædicti, quandocunque pro ipsis duxerimus demandandum, ii. 864.

the great charter, they were entitled to enjoy, Edward III., on the petition of his first parliament, who judged that such compulsory service either was or ought to be rendered illegal, passed a remarkable act, with the simple brevity of those times: "That no man from henceforth shall be charged to arm himself, otherwise than he was wont in the time of his progenitors, the kings of England; and that no man be compelled to go out of his shire but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defence of the realm." (Stat. 1 Edw. III. c. 5.)

This statute, by no means of inconsiderable importance in our constitutional history, put a stop for some ages to these arbitrary conscriptions. But Edward had recourse to another means of levying men without his own cost, by calling on the counties and principal towns to furnish a certain number of troops. Against this the parliament provided a remedy by an act in the 25th year of his reign: "That no man should be constrained to find men at arms, hoblers nor archers, other than those who hold by such service, if it be not by common consent and grant in parliament." Both these statutes were recited and confirmed in the fourth year of Henry IV. (25 Edw. III. c. 8. 4 H. IV. c. 13.)

The successful resistance thus made by parliament appears to have produced the discontinuance of compulsory levies for foreign warfare. Edward III. and his successors, in their long contention with France, resorted to the mode of recruiting by contracts with men of high rank or military estimation, whose influence was greater probably than that of the crown towards procuring voluntary enlistments. Their pay, as stipulated in such of these contracts as are extant, was extremely high; but it secured the service of a brave and vigorous yeomanry. Under the house of Tudor, in conformity to their more despotic scheme of government, the salutary enactments of former times came to be disregarded; Henry VIII. and Elizabeth sometimes compelling the counties to furnish soldiers: and the prerogative of pressing men for military service, even out of the kingdom, having not only become as much established as undisputed usage could make it, but acquiring no slight degree of sanction by an act passed under Philip and Mary, which, without repealing or adverting to the statutes of Edward III. and Henry IV., recognises, as it seems, the right of the crown to levy men for service in war, and imposes penalties on persons absenting themselves from musters commanded by the king's authority to be held for that purpose.[1] Clarendon, whose political heresies sprang in a great measure from his possessing but a very imperfect knowledge of our ancient constitution, speaks of the act that declared the pressing of soldiers illegal, though exactly following, even in its language, that of Edward III., as contrary to the usage and custom of all times.

It is scarcely perhaps necessary to observe that there had never been

[1] 4 & 5 Philip and Mary, c. 3. The Harleian manuscripts are the best authority for the practice of pressing soldiers to serve in Ireland or elsewhere, and are full of instances. The Mouldys and Bullcalfs were in frequent requisition. See vols. 309. 1926. 2219. and others. Thanks to Humphrey Wanley's diligence, the analysis of these papers in the catalogue will save the inquirer the trouble of reading, or the mortification of finding he cannot read, the terrible scrawl in which they are generally written.

any regular army kept up in England. Henry VII. established the yeomen of the guard in 1485, solely for the defence of his person, and rather perhaps, even at that time, to be considered as the king's domestic servants, than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defence; the Tower of London, Portsmouth, the castle of Dover, the fort of Tilbury, and, before the union of the crowns, Berwick and some other places on the Scottish border. I have met with very little as to the nature of these garrisons. But their whole number must have been insignificant, and probably at no time equal to resist any serious attack.

We must take care not to confound this strictly military force, serving, whether by virtue of tenure or engagement, wheresoever it should be called, with that of a more domestic and defensive character to which alone the name of militia was usually applied. By the Anglo-Saxon laws, or rather by one of the primary and indispensable conditions of political society, every freeholder, if not every freeman, was bound to defend his country against hostile invasion. It appears that the alderman or earl, while those titles continued to imply the government of a county, was the proper commander of this militia. Henry II., in order to render it more effective in cases of emergency, and perhaps with a view to extend its service, enacted by consent of parliament, that every freeman, according to the value of his estate or moveables, should hold himself constantly furnished with suitable arms and equipments.[1] By the statute of Winchester, in the 13th year of Edward I., these provisions were enforced and extended. Every man, between the ages of fifteen and sixty, was to be assessed, and sworn to keep armour according to the value of his lands and goods; for fifteen pounds and upwards in rent, or forty marks in goods, a hauberk, an iron breastplate, a sword, a knife, and a horse; for smaller property less expensive arms. A view of this armour was to be taken twice in the year, by constables chosen in every hundred. (Stat. 13 E. I.) These regulations appear by the context of the whole statute to have more immediate regard to the preservation of internal peace, by suppressing tumults and arresting robbers, than to the actual defence of the realm against hostile invasion; a danger not at that time very imminent. The sheriff, as chief conservator of public peace, and minister of the law, had always possessed the right of summoning the posse comitatûs; that is, of calling on all the king's liege subjects within his jurisdiction for assistance, in case of any rebellion or tumultuous rising, or when bands of robbers infested the public ways, or when, as occurred very frequently, the execution of legal process was forcibly obstructed. It seems to have been in the policy of that wise prince, to whom we are indebted for so many signal improvements in our law, to give a more effective and permanent energy to this power of the sheriff. The provisions, however, of the statute of Winton, so far as they obliged every proprietor to possess suitable arms, were of course applicable to national defence. In seasons of public danger, threatening invasion

[1] Wilkins's Leges Anglo-Saxonicæ, p. 333. Lyttleton's Henry II., iii 354.

from the side of Scotland or France, it became customary to issue commissions of array, empowering those to whom they were addressed to muster and train all men capable of bearing arms in the counties to which their commission extended, and hold them in readiness to defend the kingdom. The earliest of these commissions that I find in Rymer is of 1324, and the latest of 1557.

The obligation of keeping sufficient arms according to each man's estate was preserved by a statute of Philip and Mary, which made some changes in the rate and proportion, as well as the kind of arms. (5 Philip and Mary, c. 2.) But these ancient provisions were abrogated by James in his first parliament.[1] The nation, become for ever secure from invasion on the quarter where the militia service had been most required, and freed from the other dangers which had menaced the throne of Elizabeth, gladly saw itself released from an expensive obligation. The government again may be presumed to have thought that weapons of offence were safer in its hands than in those of its subjects. Magazines of arms were formed in different places, and generally in each county (Rymer, xix. 310): but if we may reason from the absence of documents, there was little regard to military array and preparation; save that the citizens of London mustered their trained bands on holidays, an institution that is said to have sprung out of a voluntary association, called the artillery company, formed in the reign of Henry VIII. for the encouragement of archery, and acquiring a more respectable and martial character at the time of the Spanish armada.[2]

The power of calling into arms, and mustering the population of each county, given in earlier times to the sheriff or justices of the peace, or to special commissioners of array, began to be entrusted, in the reign of Mary, to a new officer, entitled the lord lieutenant. This was usually a peer, or at least a gentleman of large estate within the county, whose office gave him the command of the militia, and rendered him the chief vicegerent of his sovereign, responsible for the maintenance of public order. This institution may be considered as a revival of the ancient local earldom; and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the discontinuance of that office. Yet the lord lieutenant has so peculiarly military an authority, that it does not in any degree control the civil power of the sheriff as the executive minister of the law. In certain cases, such as a tumultuous obstruction of legal authority, each might be said to possess an equal power; the sheriff being still undoubtedly competent to call out the posse comitatûs in order to enforce obedience. Practically however, in all serious circumstances, the lord lieutenant has always been reckoned the efficient and responsible guardian of public tranquillity.

From an attentive consideration of this sketch of our military law, it

[1] 1 Jac. c. 25. § 46. An order of council, in Dec. 1638, that every man having lands of inheritance to the clear yearly value of 200*l.* should be chargeable to furnish a light horse-man every one of 300*l.* estate to furnish a lance, at the discretion of the lord-lieutenant, was unwarranted by any existing law, and must be reckoned among the violent stretches of prerogative at that time. Rushw. Abr. ii. 500.

[2] Grose's Military Antiquities, i. 150. The word artillery was used in that age for the long-bow.

will strike the reader that the principal question to be determined was, whether, in time of peace, without pretext of danger of invasion, there were any legal authority that could direct the mustering and training to arms of the able-bodied men in each county, usually denominated the militia. If the power existed at all, it manifestly resided in the king. The notion that either or both houses of parliament, who possess no portion of executive authority, could take on themselves one of its most peculiar and important functions, was so preposterous that we can scarcely give credit to the sincerity of any reasonable person who advanced it. In the imminent peril of hostile invasion, in the case of intestine rebellion, there seems to be no room for doubt, that the king who could call on his subjects to bear arms for their country and laws, could oblige them to that necessary discipline and previous training, without which their service would be unavailing. It might also be urged that he was the proper judge of the danger. But that, in a season of undeniable tranquillity, he could withdraw his subjects from their necessary labours against their consent, even for the important end of keeping up the use of military discipline, is what, with our present sense of the limitations of royal power, it might be difficult to affirm. The precedents under Henry VIII. and Elizabeth were numerous; but not to mention that many, perhaps most of these, might come under the class of preparations against invasion, where the royal authority was not to be doubted, they could be no stronger than those other precedents for pressing and mustering soldiers, which had been declared illegal. There were at least so many points uncertain, and some wherein the prerogative was plainly deficient, such as the right of marching the militia out of their own counties, taken away, if it had before existed, by the act just passed against pressing soldiers, that the concurrence of the whole legislature seemed requisite to place so essential a matter as the public defence on a secure and permanent footing.[1]

The aim of the houses however in the bill for regulating the militia, presented to Charles in Feb. 1642, and his refusal to pass which led by rapid steps to the civil war, was not so much to remove those uncertainties by a general provision (for in effect they left them much as before), as to place the command of the sword in the hands of those they could control;—nominating in the bill the lords lieutenant of every county, who were to obey the orders of the two houses, and to be irremovable by the king for two years. No one can pretend that this was not an encroachment on his prerogative.[2] It can only find a justification in the precarious condition, as the commons asserted it to be, of those liberties they had so recently obtained, in their just persuasion of the king's insincerity, and in the demonstrations he had already made of an intention to win back his authority at the sword's

[1] Whitelock maintained, both on this occasion, and at the treaty of Uxbridge, that the power of the militia resided in the king and two houses jointly, p. 55. 129. This, though not very well expressed, can only mean that it required an act of parliament to determine and regulate it.

[2] See the list of those recommended, Parl. Hist. 1083. Some of these were royalists; but on the whole, three fourths of the military force of England would have been in the hands of persons, who, though men of rank, and attached to the monarchy, had given Charles no reason to hope that they would decline to obey any order which the parliament might issue, however derogatory or displeasing to himself.

point.[1] But it is equitable, on the other hand, to observe that the commons had by no means greater reason to distrust the faith of Charles, than he had to anticipate fresh assaults from them on the power he had inherited, on the form of religion which alone he thought lawful, on the counsellors who had served him most faithfully, and on the nearest of his domestic ties. If the right of self-defence could be urged by parliament for this demand of the militia, must we not admit that a similar plea was equally valid for the king's refusal? However arbitrary and violent the previous government of Charles may have been, however disputable his sincerity at present, it is vain to deny, that he had made the most valuable concessions, and such as had cost him very dear. He had torn away from his diadem what all monarchs would deem its choicest jewel, that high attribute of uncontrollable power, by which their flatterers have in all ages told them they resemble and represent the Divinity. He had seen those whose counsels he had best approved, rewarded with exile or imprisonment, and had incurred the deep reproach of his own heart by the sacrifice of Strafford. He had just now given a reluctant assent to the extinction of one estate of parliament, by the bill excluding bishops from the house of peers. Even in this business of the militia, he would have consented to nominate the persons recommended to him as lieutenants, by commissions revocable at his pleasure; or would have passed the bill rendering them irremovable for one year, provided they might receive their orders from himself and the two houses jointly.[2] It was not unreasonable for the king to pause at the critical moment which was to make all future denial nugatory, and inquire whether the prevailing majority designed to leave him what they had not taken away. But he was not long kept in uncertainty upon this score. The nineteen propositions tendered to him at York in the beginning of June, and founded upon addresses and declarations of a considerably earlier date,[3] went to abrogate in spirit the whole existing constitution, and were in truth so far beyond what the king could be expected to grant, that terms more intolerable were scarcely proposed to him in his

[1] "When this bill had been with much ado accepted, and first read, there were few men who imagined it would ever receive further countenance; but now there were very few who did not believe it to be a very necessary provision for the peace and safety of the kingdom. So great an impression had the late proceedings made upon them, that with little opposition it passed the commons, and was sent up the lords." Clarend. ii. 180.

[2] Clarendon, ii. 375. Parl. Hist. 1077. 1106., &c. It may be added, that the militia bill, as originally tendered to the king by the two houses, was ushered in by a preamble asserting that there had been a most dangerous and desperate design on the house of commons, the effect of the bloody counsels of the papists, and other ill-affected persons, who had already raised a rebellion in Ireland. Clar. p. 336. Surely he could not have passed this, especially the last allusion, without recording his own absolute dishonour; but it must be admitted, that on the king's objection, they omitted this preamble, and also materially limited the powers of the lords lieutenant to be appointed under the bill.

[3] A declaration of the grievances of the kingdom, and the remedies proposed, dated April 1., may be found in the Parl. Hist. p. 1155. But that work does not notice that it had passed the commons on Feb. 19., before the king had begun to move towards the north. Com. Journ. It seems not to have pleased the house of lords, who postponed its consideration, and was much more grievous to the king than the nineteen propositions themselves. One proposal was to remove all papists from about the queen; that is, to deprive her of the exercise of her religion, guaranteed by her marriage contract. To this objection Pym replied that the house of commons had only to consider the law of God and the law of the land; that they must resist idolatry, lest they incur the divine wrath, and must see the laws of this kingdom executed; that the public faith is less than that they owe to God, against which no contract can oblige, neither can any bind us against the law of the kingdom. Parl. Hist. 1162.

greatest difficulties, nor at Uxbridge, nor at Newcastle, nor even at Newport.

These famous propositions import that the privy council and officers of state should be approved by parliament, and take such an oath as the two houses should prescribe; that during the intervals of parliament, no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers be taken away; the church government and liturgy be reformed as both houses should advise; the militia and all fortified places put into such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers to be made in future from sitting in parliament, unless they be admitted with the consent of both houses. A few more laudable provisions, such as that the judges should hold their offices during good behaviour, which the king had long since promised, (Parl. Hist. 702.), were mixed up with these strange demands. Even had the king complied with such unconstitutional requisitions, there was one behind, which, though they had not advanced it on this occasion, was not likely to be forgotten. It had been asserted by the house of commons in their last remonstrance, that, on a right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer.[1] It has been said by some that this was actually the constitution of Scotland, where the crown possessed a counterbalancing influence; but such a doctrine was in this country as repugnant to the whole history of our laws, as it was incompatible with the subsistence of the monarchy in any thing more than a nominal pre-eminence.

In weighing the merits of this great contest, in judging whether a thoroughly upright and enlightened man would rather have listed under the royal or parliamentary standard, there are two political postulates, the concession of which we may require: one, that civil war is such a calamity as nothing but the most indispensable necessity can authorise any party to bring on; the other, that the mixed government of England by king, lords, and commons, was to be maintained in preference to any other form of polity. The first of these can hardly be disputed; and though the denial of the second would certainly involve no absurdity, yet it may justly be assumed where both parties avowed their adherence to it as a common principle. Such as prefer a despotic or a republican form of government will generally, without much fur-

[1] Clarendon, p. 452. Upon this passage in the remonstrance a division took place, when it was carried by 103 to 61. Parl. Hist. 1302. The words in the old form of coronation oath, as preserved in a bill of parliament under Henry IV., concerning which this grammatico-political contention arose, are the following: "Concedis justas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, *quas vulgus elegerit*, secundum vires tuas?" It was maintained by one side that *elegerit* should be construed in the future tense, while the other contended for the præterperfect. But even if the former were right, as to the point of Latin construction, though consuetudines seems naturally to imply a past tense, I should by no means admit the strange inference that the king was bound to sanction all laws proposed to him. His own assent is involved in the expression, quas vulgus elegerit, which was introduced, on the hypothesis of the word being in the future tense, as a security against his legislation without consent of the people in parliament. The English coronation oath, which Charles had taken, excludes the future: Sir, will you grant to hold and keep the laws and rightful customs, *which the commonalty of this your kingdom have?*

ther inquiry, have made their election between Charles the First and the parliament. We do not argue from the creed of the English constitution to those who have abandoned its communion.

There was so much in the conduct and circumstances of both parties in the year 1642, to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. On the one hand, he would entertain little doubt of the king's desire to overthrow by force or stratagem whatever had been effected in parliament, and to establish a plenary despotism; his arbitrary temper, his known principles of government, the natural sense of wounded pride and honour, the instigations of a haughty woman, the solicitations of favourites, the promises of ambitious men, were all at work to render his new position as a constitutional sovereign, even if unaccompanied by fresh indignities and encroachments, too grievous and mortifying to be endured. He had already tampered in a conspiracy to overawe, if not to disperse, the parliament; he had probably obtained large promises, though very little to be trusted, from several of the presbyterian leaders in Scotland during his residence there in the summer of 1641; he had attempted to recover his ascendancy by a sudden blow in the affair of the five members; he had sent the queen out of England, furnished with the crown jewels, for no other probable end than to raise men and procure arms in foreign countries;[1] he was now about to take the field with an army, composed in part of young gentlemen disdainful of a puritan faction that censured their licence, and of those soldiers of fortune, reckless of public principle, and averse to civil control, whom the war in Germany had trained; in part of the catholics, a wealthy and active body, devoted to the crown, from which alone they had experienced justice or humanity, and from whose favour and gratitude they now expected the most splendid returns. Upon neither of these parties could a lover of his country and her liberties look without alarm; and though he might derive more hope from those better spirits, who had withstood the prerogative in its exorbitance, as they now sustained it in its decline, yet it could not be easy to foretell that they would preserve suficient influence to keep steady the balance of power, in the contingency of any decisive success of the royal arms.

But, on the other hand, the house of commons presented still less favourable prospects. We should not indeed judge over-severely some acts of a virtuous indignation in the first moments of victory,[2] or those heats of debate, without some excesses of which a popular assembly is in danger of falling into the opposite extreme of phlegmatic security. But, after every allowance has been made, he must bring very heated passions to the records of those times, who does not perceive in the

[1] See what is said as to this by P. Orleans, iii. 87. and by Madame de Motteville, i. 268. Her intended journey to Spa, in July, 1641, which was given up on the remonstrance of parliament, is highly suspicious. The house, it appears, had received even then information that the crown jewels were to be carried away. Nalson, ii. 391.

[2] The impeachments of lord Finch and of judge Berkeley for high treason are at least as little justifiable in point of law as that of Strafford. Yet, because the former of these was moved by lord Falkland, Clarendon is so far from objecting to it, that he imputes as a fault to the parliamentary leaders their lukewarmness in this prosecution, and insinuates that they were desirous to save Finch. See especially the new edit. of Clarendon, vol. i. App. But they might reasonably think that Finch was not of sufficient importance to divert their attention from the grand apostate, whom they were determined to punish. Finch fled to Holland;

conduct of that body a series of glaring violations, not only of positive and constitutional, but of those higher principles which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both houses in August 1641, and that in November, authorising the earl of Leicester to raise men for the defence of Ireland without warrant under the great seal; both manifest encroachments on the executive power;[1] and the enormous extension of privilege, under which every person accused on the slightest testimony of disparaging their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognisance, was dragged before them as a delinquent, and lodged in their prison.[2] Witness the outrageous attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterwards of sir Ralph Hopton, to the Tower, for such language used in debate as would not have excited any observation in ordinary times;—their continual encroachments on the rights and privileges of the lords, as in their intimation that, if bills thought by them necessary for the public good should fall in the upper house, they must join with the minority of the lords in representing the same to the king;[3] or in the impeachment of the duke of Richmond

so that then it would have been absurd to take much trouble about his impeachment: Falkland however opened it to the lords, 14 Jan. 1641, in a speech containing full as many extravagant propositions as any of St. John's. Berkeley, besides his forwardness about ship-money, had been notorious for subserviency to the prerogative. The house sent the usher of the black rod to the court of King's Bench, while the judges were sitting, who took him away to prison; "which struck a great terror," says Whitelock, "in the rest of his brethren then sitting in Westminster-Hall, and in all his profession." The impeachment against Berkeley for high treason ended in his paying a fine of 10,000*l.* But what appears strange and unjustifiable is, that the houses suffered him to sit for some terms as a judge, with this impeachment over his head. The only excuse for this is, that there were a great many vacancies on that bench.

[1] Journ. Aug. 30. and Nov. 9. It may be urged in behalf of these ordinances, that the king had gone into Scotland against the wish of the two houses, and after refusing to appoint a custos regni at their request. But if the exigency of the case might justify, under those circumstances, the assumption of an irregular power, it ought to have been limited to the period of the sovereign's absence.

[2] Parl. Hist. 678. et alibi. Journ. passim. Clarendon, i. 475. says this began to pass all bounds after the act rendering them indissoluble. "It had never," he says, "been attempted before this parliament to commit any one to prison, except for some apparent breach of privilege, such as the arrest of one of their members, or the like." Instances of this, however, had occurred before, of which I have mentioned in another place the grossest, that of Floyd, in 1621. The lords in Mar. 1642, condemned one Sandford, a tailor, for cursing the parliament, to be kept at work in Bridewell during his life, besides some minor inflictions. Rushworth. A strange order was made by the commons, Dec. 10. 1641, that, sir William Earl having given information of some dangerous words spoken by certain persons, the speaker shall issue a warrant to apprehend *such persons as sir William Earl should point out.*

[3] The entry of this in the journals is too characteristic of the tone assumed in the commons to be omitted. "This committee (after naming some of the warmest men) is appointed to prepare heads for a conference with the lords, and to acquaint them what bills this house hath passed and sent up to their lordships, which much concern the safety of the kingdom, but have had no consent of their lordships unto them; and that, this house being the representative body of the whole kingdom, and their lordships being but as particular persons, and coming to parliament in a particular capacity, that if they shall not be pleased to consent to the passing of those acts and others necessary to the preservation and safety of the kingdom, that then this house, together with such of the lords that are more sensible of the safety of the kingdom, may join together and represent the same unto his majesty." This was on Dec. 3. 1641, before the argument from necessity could be pretended, and evidently contains the germ of the resolution of Feb. 1649, that the house of lords was useless.

The resolution was moved by Mr. Pym; and on Mr. Godolphin's objecting, very sensibly, that if they went to the king with the lesser part of the lords, the greater part of the lords might go to the king with the lesser part of them, he was commanded to withdraw (Verney MS.); and an order appears on the journals, that on Tues. next the house would take into consideration the offence now given by words spoken by Mr. Godolphin. Nothing farther, however, seems to have taken place.

for words, and those of the most trifling nature, spoken in the upper house;[1]—their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established constitution;[2] while they encouraged those of a tumultuous multitude at their bar in favour of innovation;[3]—their usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property. (Nalson, ii. 234. 245.) Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the house of lords during their compelled absence through fear of the populace; a protest not perhaps entirely well expressed, but abundantly justifiable in its argument by the plainest principles of law.[4] These great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe perhaps, but far more sweeping, than that which had rendered the star-chamber odious.

But it may reasonably also be doubted whether, in staking their own cause on the perilous contingencies of war, the house of commons did not expose the liberties for which they professedly were contending, to a far greater risk than they could have incurred even from peace with an insidious court. For let any one ask himself what would have been the condition of the parliament, if by the extension of that panic which in fact seized upon several regiments, or by any of those countless

[1] This was carried 27th Jan. 1642, by a majority of 223 to 123, the largest number, I think, that voted for any question during the parliament. Richmond was an eager courtier, and perhaps an enemy to the constitution: which may account for the unusual majority in favour of his impeachment, but cannot justify it. He had merely said, on a proposition to adjourn, "Why should we not adjourn for six months?"

[2] Parl. Hist. 1147. 1150. 1188. Clarendon, ii. 284. 346.

[3] Clarendon, 322. Among other petitions presented at this time, the noble author inserts one from the porters of London. Mr. Brodie asserts of this, that "it is nowhere to be found or alluded to, so far as I recollect, except in Clarendon's History; and I have no hesitation in pronouncing it a forgery by that author, to disgrace the petitions which so galled him and his party. The journals of the commons give an account of every petition; and I have gone over them *with the utmost care*, in order to ascertain whether such a petition ever was presented, and yet cannot discover a trace of it." (iii. 306.) This writer is much too precipitate and passionate. No sensible man will believe Clarendon to have committed so foolish and useless a forgery; and as to Mr. B.'s diligent perusal of the journals, this petition is fully noticed, though not inserted at length, on the 3d of February.

[4] The bishops had so few friends in the house of commons, that in the debate arising out of this protest, all agreed that they should be charged with treason, except one gentleman, who said he thought them only mad, and proposed that they should be sent to Bedlam instead of the Tower. Even Clarendon bears rather hard on the protest; chiefly, as is evident, because it originated with Williams. In fact, several of these prelates had not courage to stand by what they had done, and made trivial apologies. Parl. Hist. 996. Whether the violence was such as to form a complete justification for their absenting themselves, is a question of fact which we cannot well determine. Three bishops continued at their posts, and voted against the bill for removing them from the house of lords. See a passage from Hall's Hard Measure, in Wordsworth's Eccles. Biogr. v. 317. The king always entertained a notion that this act was null in itself; and in one of his proclamations from York, not very judiciously declares his intention to preserve the privileges of the *three* estates of parliament. The lords admitted the twelve bishops to bail; but, with their usual pusillanimity, recommitted them on the commons' expostulation. Parl. Hist. 1092.

accidents which determine the fate of battles, the king had wholly defeated their army at Edgehill? Is it not probable, nay, in such a supposition, almost demonstrable, that in those first days of the civil war, before the parliament had time to discover the extent of its own resources, he would have found no obstacle to his triumphal entry into London? And, in such circumstances, amidst the defection of the timid and lukewarm, the consternation of the brawling multitude, and the exultation of his victorious troops, would the triennial act itself, or those other statutes which he had very reluctantly conceded, have stood secure? Or if we believe that the constitutional supporters of his throne, the Hertfords, the Falklands, the Southamptons, the Spencers, would still have had sufficient influence to shield from violent hands that palladium which they had assisted to place in the building, can there be a stronger argument against the necessity of taking up arms for the defence of liberties which, even in the contingency of defeat, could not have been subverted?

There were many indeed at that time, as there have been ever since, who, admitting all the calamities incident to civil war, of which this country reaped the bitter fruits for twenty years, denied entirely that the parliament went beyond the necessary precautions for self-defence, and laid the whole guilt of the aggression at the king's door. He had given, it was said, so many proofs of a determination to have recourse to arms, he had displayed so insidious an hostility to the privileges of parliament, that, if he should be quietly allowed to choose and train soldiers, under the name of a militia, through hired servants of his own nomination, the people might find themselves either robbed of their liberties by surprise, or compelled to struggle for them in very unfavourable circumstances. The commons, with more loyal respect perhaps than policy, had opposed no obstacle to his deliberate journey towards the north, which they could have easily prevented,[1] though well aware that he had no other aim but to collect an army; was it more than ordinary prudence to secure the fortified town of Hull with its magazine of arms from his grasp, and to muster the militia in each county under the command of lieutenants in whom they could confide, and to whom, from their rank and personal character, he could frame no just objection?

These considerations are doubtless not without weight, and should restrain such as may not think them sufficient from too strongly censuring those who, deeming that either civil liberty or the ancient constitution must be sacrificed, persisted in depriving Charles the First of every power, which, though pertaining to a king of England, he could not be trusted to exercise. We are, in truth, after a lapse of ages, often able to form a better judgment of the course that ought to have been pursued in political emergencies than those who stood nearest to the scene. Not only we have our knowledge of the event to guide and correct our imaginary determinations; but we are free from those fallacious rumours, those pretended secrets, those imperfect and illusive

[1] May, p. 187., insinuates that the civil war should have been prevented by more vigorous measures on the part of the parliament. And it might probably have been in their power to have secured the king's person before he reached York. But the majority were not ripe for such violent proceedings.

views, those personal prepossessions, which in every age warp the political conduct of the most well-meaning. The characters of individuals, so frequently misrepresented by flattery or party rage, stand out to us revealed by the tenor of their entire lives, or by the comparison of historical anecdotes, and that more authentic information which is reserved for posterity. Looking as it were from an eminence, we can take a more comprehensive range, and class better the objects before us in their due proportions and in their bearings on one another. It is not easy for us even now to decide, keeping in view the maintenance of the entire constitution, from which party in the civil war greater mischief was to be apprehended; but the election was, I am persuaded, still more difficult to be made by contemporaries. No one, at least, who has given any time to the study of that history, will deny that among those who fought in opposite battalions at Edgehill and Newbury, or voted in the opposite parliaments of Westminster and Oxford, there were many who thought much alike on general theories of prerogative and privilege, divided only perhaps by some casual prejudices, which had led these to look with greater distrust on courtly insidiousness, and those with greater indignation at popular violence. We cannot believe that Falkland and Colepepper differed greatly in their constitutional principles from Whitelock and Pierpoint, or that Hertford and Southampton were less friends to a limited monarchy than Essex and Northumberland.

There is, however, another argument sometimes alleged of late, in justification of the continued attacks on the king's authority; which is the more specious, as it seems to appeal to what are now denominated the Whig principles of the constitution. It has been said that, sensible of the mal-administration the nation had endured for so many years, (which, if the king himself were to be deemed by constitutional fiction ignorant of it, must at least be imputed to evil advisers,) the house of commons sought only that security which, as long as a sound spirit continues to actuate its members, it must ever require—the appointment of ministers in whose fidelity to the public liberties it could better confide; that by carrying frankly into effect those counsels which he had unwisely abandoned upon the earl of Bedford's death, and bestowing the responsible offices of the state on men approved for patriotism, he would both have disarmed the jealousy of his subjects and ensured his own prerogative, which no ministers are prone to impair.

Those who are struck by these considerations may not, perhaps, have sufficiently reflected on the changes which the king had actually made in his administration since the beginning of the parliament. Besides those already mentioned, Essex, Holland, Saye, and St. John, he had, in the autumn of 1641, conferred the post of secretary of state on lord Falkland, and that of master of the rolls on sir John Colepepper; both very prominent in the redress of grievances and punishment of delinquent ministers during the first part of the session, and whose attachment to the cause of constitutional liberty there was no sort of reason to distrust. They were indeed in some points of a different way of thinking from Pym and Hampden, and had doubtless been chosen by the king on that account. But it seems rather beyond the legitimate bounds of parliamentary opposition to involve the kingdom in civil war,

simply because the choice of the crown had not fallen on its leaders. The real misfortune was, that Charles did not rest in the advice of his own responsible ministers, against none of whom the house of commons had any just cause of exception. The theory of our constitution in this respect was very ill established; and had it been more so, there are perhaps few sovereigns, especially in circumstances of so much novelty, who would altogether conform to it. But no appointment that he could have made from the patriotic bands of parliament would have furnished a security against the intrigues of his bed-chamber or the influence of the queen.

The real problem that we have to resolve, as to the political justice of the civil war, is not the character, the past actions, or even the existing designs, of Charles; not even whether he had as justly forfeited his crown as his son was deemed to have done for less violence and less insincerity; not even, I will add, whether the liberties of his subjects could have been absolutely secure under his government; but whether the risk attending his continuance upon the throne with the limited prerogatives of an English sovereign were great enough to counterbalance the miseries of protracted civil war, the perils of defeat, and the no less perils, as experience showed, of victory. Those who adopt the words spoken by one of our greatest orators, and quoted by another, "There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other," have for themselves decided this question.[1] But, as I know, (and the history of eighteen years is my witness), how little there was on one side of such liberty as a wise man would hold dear, so I am not yet convinced that the great body of the royalists, the peers and gentry of England, were combating for the sake of tyranny. I cannot believe them to have so soon forgotten their almost unanimous discontent at the king's arbitrary government in 1640, or their general concurrence in the first salutary measures of the parliament. I cannot think that the temperate and constitutional language of the royal declarations and answers to the house of commons in 1642, known to have proceeded from the pen of Hyde, and as superior to those on the opposite side in argument as they were in eloquence, was intended for the willing slaves of tyranny. I cannot discover in the extreme reluctance of the royalists to take up arms, and their constant eagerness for an accommodation, (I speak not of mere soldiers, but of the greater and more important portion of that party,) that zeal for the king's re-establishment in all his abused prerogatives which some connect with the very names of a royalist or a cavalier.[2]

[1] These words are ascribed to lord Chatham, in a speech of Mr. Grattan, according to lord John Russell, in his Essay on the History of the English Government, p. 55.

[2] Clarendon has several remarkable passages, chiefly towards the end of the fifth book of his History, on the slowness and timidity of the royalist party before the commencement of the civil war. The peers at York, forming, in fact, a majority of the upper house, for there were nearly forty of them, displayed much of this. Want of political courage was a characteristic of our aristocracy at this period, bravely as many behaved in the field. But I have no doubt that a real jealousy of the king's intentions had a considerable effect.

They put forth a declaration, signed by all their hands, on the 15th of June, 1642, professing before God their full persuasion that the king had no design to make war on the parliament, and that they saw no colour of preparations or counsels that might reasonably beget a belief of any such designs; but that all his endeavours tended to the settlement of the protestant religion, the just privileges of parliament, the liberty of the subject, &c. This was an ill-judged,

It is well observed by Burnet, in answer to the vulgar notion that Charles I. was undone by his concessions, that, but for his concessions, he would have had no party at all. This is, in fact, the secret of what seems to astonish the parliamentary historian, May, of the powerful force that the king was enabled to raise, and the protracted resistance he opposed. He had succeeded, according to the judgment of many real friends of the constitution, in putting the house of commons in the wrong. Law, justice, moderation, once ranged against him, had gone over to his banner. His arms might reasonably be called defensive, if he had no other means of preserving himself from the condition, far worse than captivity, of a sovereign compelled to a sort of suicide upon his own honour and authority. For, however it may be alleged that a king is bound in conscience to sacrifice his power to the public will, yet it could hardly be inexcusable not to have practised this disinterested morality; especially while the voice of his people was by no means unequivocal, and while the major part of one house of parliament adhered openly to his cause.[1]

It is indeed a question perfectly distinguishable from that of the abstract justice of the king's cause, whether he did not too readily abandon his post as a constitutional head of the parliament; whether, with the greater part of the peers, and a very considerable minority in the commons, resisting, in their places at Westminster all violent encroachments on his rights, he ought not rather to have sometimes persisted in a temperate though firm assertion of them, sometimes had recourse to compromise and gracious concession, instead of calling away so many of his adherents to join his arms as left neither numbers nor credit with those who remained. There is a remarkable passage in lord Clarendon's life, not to quote Whitelock and other writers less favourable to Charles, where he intimates his own opinion that the king would have had a fair hope of withstanding the more violent faction, if after the queen's embarkation for Holland in February 1642, he had returned to Whitehall; admitting, at the same time, the hazards and inconveniences to which this course was liable. (Life of Clarendon, p. 56.) That he resolved on trying the fortune of arms, his noble his-

and even absurd piece of hypocrisy, calculated to degrade the subscribers; since the design of raising troops was hardly concealed, and every part of the king's conduct since his arrival at York manifested it. The commission of array, authorising certain persons in each county to raise troops, was in fact issued immediately after this declaration. It is rather mortifying to find lord Falkland's name, not to mention others, in this list; but he probably felt it impossible to refuse his signature, without throwing discredit on the king; and no man engaged in a party ever did, or ever can, act with absolute sincerity; or at least he can be of no use to his friends, if he does not adhere to this uncompromising principle.

The commission of array was ill received by many of the king's friends, as not being conformable to law. Clarendon, iii. 91. Certainly it was not so; but it was justifiable as the means of opposing the parliament's ordinance for the militia, at least equally illegal. This, however, shows very strongly the cautious and constitutional temper of many of the royalists, who could demur about the legality of a measure of necessity, since no other method of raising an army would have been free from similar exception. The same reluctance to enter on the war was displayed in the propositions for peace, which the king, in consequence of his council's importunity, sent to the two houses through the earl of Southampton, just before he raised his standard at Nottingham.

[1] According to a list made by the house of lords, May 25. 1642, the peers with the king at York were thirty-two; those who remained at Westminster, forty-two. But of the latter, more than ten joined the others before the commencement of the war, and five or six afterwards; two or three of those at York returned. During the war there were at the outside thirty peers who sat in the parliament.

torian insinuates to have been the effect of the queen's influence, with whom, before her departure, he had concerted his future proceedings. Yet, notwithstanding the deference owing to contemporary opinions, I cannot but suspect that Clarendon has, in this instance, as in some other passages, attached too great an importance to particular individuals, measuring them rather by their rank in the state, than by that capacity and energy of mind, which, in the levelling hour of revolution, are the only real pledges of political influence. He thought it of the utmost consequence to the king that he should gain over the earls of Essex and Northumberland, both, or at least the former, wavering between the two parties, though voting entirely with the commons. Certainly the king's situation required every aid, and his repulsive hardness towards all who had ever given him offence displayed an obstinate unconciliating character, which deprived him of some support he might have received. But the subsequent history of these two celebrated earls, and indeed of all the moderate adherents to the parliament, will hardly lead us to believe that they could have afforded the king any protection. Let us suppose that he had returned to Whitehall, instead of proceeding towards the north. It is evident that he must either have passed the bill for the militia, or seen the ordinances of both houses carried into effect without his consent. He must have consented to the abolition of episcopacy, or at least have come into some compromise which would have left the bishops hardly a shadow of their jurisdiction and pre-eminence. He must have driven from his person those whom he best loved and trusted. He would have found it impossible to see again the queen, without awakening distrust, and bringing insult on them both. The royalist minority of parliament, however considerable in numbers, was lukewarm and faint-hearted. That they should have gained strength so as to keep a permanent superiority over their adversaries, led as they were by statesmen so bold and profound as Hampden, Pym, St. John, Cromwell, and Vane, is what, from the experience of the last twelve months, it was unreasonable to anticipate. But, even if the commons had been more favourably inclined, it would not have been in their power to calm the mighty waters that had been moved from their depths. They had permitted the populace to mingle in their discussions, testifying pleasure at its paltry applause, and encouraging its tumultuous aggressions on the minority of the legislature. What else could they expect than that, so soon as they ceased to satisfy the city apprentices, or the trained bands raised under their militia bill, they must submit to that physical strength which is the ultimate arbiter of political contentions?

Thus, with evil auspices, with much peril of despotism on the one hand, with more of anarchy on the other, amidst the apprehensions and sorrows of good men, the civil war commenced in the summer of 1642. I might now perhaps pass over the period that intervened, until the restoration of Charles II., as not strictly belonging to a work which undertakes to relate the progress of the English constitution. But this would have left a sort of chasm that might disappoint the reader; and as I have already not wholly excluded our more general political history, without a knowledge of which the laws and government of any people must be unintelligible, it will probably not be deemed an un-

necessary digression, if I devote one chapter to the most interesting and remarkable portion of British story.

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO THE RESTORATION.

PART I.

Success of the King in the first Part of the War—Efforts by the moderate Party for Peace—Affair at Brentford—Treaty of Oxford—Impeachment of the Queen—Waller's Plot—Secession of some Peers to the King's Quarters—Their Treatment there impolitic—The anti-pacific Party gain the Ascendant at Westminster—The Parliament makes a new Great Seal—And takes the Covenant—Persecution of the Clergy who refuse it—Impeachment and Execution of Laud—Decline of the King's Affairs in 1644*—Factions at Oxford—Royalist Lords and Commoners summoned to that City—Treaty of Uxbridge—Impossibity of Agreement—The Parliament insist on unreasonable Terms—Miseries of the War—Essex and Manchester suspected of Lukewarmness—Self-denying Ordinance—Battle of Naseby—Desperate Condition of the King's Affairs—He throws himself into the Hands of the Scots—His struggles to preserve Episcopacy, against the Advice of the Queen and others—Bad Conduct of the Queen—Publication of Letters taken at Naseby—Discovery of Glamorgan's Treaty—King delivered up by the Scots—Growth of the Independents and Republicans—Opposition to the Presbyterian Government—Toleration—Intrigues of the Army with the King—His Person seized—The Parliament yield to the Army—Mysterious Conduct of Cromwell—Imprudent Hopes of the King—He rejects the Proposals of the Army—His Flight from Hampton Court—Alarming Votes against him—Scots' Invasion—The Presbyterians regain the Ascendant—Treaty of Newport—Gradual Progress of a republican Party—Scheme among the Officers of bringing Charles to Trial—This is finally determined—Seclusion of Presbyterian Members—Motives of some of the King's Judges—Question of his Execution discussed—His Character—Icon Basilike.*—pp. 399-452.

PART II.

Abolition of the Monarchy—and of the House of Lords—Commonwealth—Schemes of Cromwell—His conversations with Whitelock—Unpopularity of the Parliament—Their Fall—Little Parliament—Instrument of Government—Parliament called by Cromwell—Dissolved by him—Intrigues of the King and his Party—Insurrectionary Movements in 1655*—Rigorous Measures of Cromwell—His arbitrary Government—He summons another Parliament—Designs to take the*

Crown—The Project fails—But his Authority as Protector is augmented—He aims at forming a new House of Lords—His Death —And Character—Richard his Son succeeds him—Is supported by some prudent Men—But opposed by a Coalition—Calls a Parliament —The Army overthrow both—Long Parliament restored—Expelled again—And again restored—Impossibility of establishing a Republic —Intrigues of the Royalists—They unite with the Presbyterians— Conspiracy of 1659*—Interference of Monk—His Dissimulation— Secluded Members return to their Seats—Difficulties about the Restoration—New Parliament—King restored—Whether previous Conditions required—Plan of reviving the Treaty of Newport inexpedient—Difficulty of framing Conditions—Conduct of the Convention about this not blamable—Except in respect of the Militia— Conduct of Monk.*—pp. 452–499.

FACTIONS that, while still under some restraint from the forms at least of constitutional law, excite our disgust by their selfishness or intemperance, are little likely to redeem their honour when their animosities have kindled civil warfare. If it were difficult for an upright man to enlist with an entire willingness under either the royalist or the parliamentarian banner, at the commencement of hostilities in 1642, it became far less easy for him to desire the complete success of one or the other cause, as advancing time displayed the faults of both in darker colours than they had previously worn. Of the parliament—to begin with the more powerful and victorious party—it may be said, I think, with not greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are recorded of them from their quarrel with the king to their expulsion by Cromwell.

Notwithstanding the secession from parliament before the commencement of the war of nearly all the peers who could be reckoned on the king's side, and of a pretty considerable part of the commons, there still continued to sit at Westminster many sensible and moderate persons, who thought that they could not serve their country better than by remaining at their posts, and laboured continually to bring about a pacification by mutual concessions. Such were the earls of Northumberland, Holland, Lincoln, and Bedford, among the peers; Selden, Whitelock, Hollis, Waller, Pierpoint, and Rudyard, in the commons. These however would have formed but a very ineffectual minority, if the war itself, for at least twelve months, had not taken a turn little expected by the parliament. The hard usage Charles seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy, accustomed to respect the established laws, and to love monarchy, as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society. Their zeal placed the king at the head of a far more considerable army than either party had anticipated. (May, p. 165.) In the first battle, that of Edgehill, though he did not remain master of the field, yet all the military consequences were

evidently in his favour.[1] In the ensuing compaign of 1643, the advantage was for several months entirely his own; nor could he be said to be a loser on the whole result, notwithstanding some reverses that accompanied the autumn. A line drawn from Hull to Southampton would suggest a not very inexact idea of the two parties, considered as to their military occupation of the kingdom, at the beginning of September 1643; for if the parliament, by the possession of Glocester and Plymouth, and by some force they had on foot in Cheshire and other midland parts, kept their ground on the west of this line, this was nearly compensated by the earl of Newcastle's possession at that time of most of Lincolnshire which lay within it. Such was the temporary effect, partly indeed of what may be called the fortune of war, but rather of the zeal and spirit of the royalists, and of their advantage in a more numerous and intrepid cavalry. (May, 212. Baillie, 373. 391.)

It has been frequently supposed, and doubtless seems to have been a prevailing opinion at the time, that if the king, instead of sitting down before Glocester at the end of August, had marched upon London, combining his operations with Newcastle's powerful army, he would have brought the war to a triumphant conclusion.[2] In these matters men judge principally by the event. Whether it would have been prudent in Newcastle to have left behind him the strong garrison of Hull under Fairfax, and an unbroken though inferior force, commanded by lord Willoughby and Cromwell in Lincolnshire, I must leave to military critics; suspecting however that he would have found it difficult to draw away the Yorkshire gentry and yeomanry, forming the strength of his army, from their unprotected homes. Yet the parliamentary forces were certainly, at no period of the war, so deficient in numbers, discipline, and confidence; and it may well be thought that the king's want of permanent resources, with his knowledge of the timidity and disunion which prevailed in the capital, rendered the boldest and most forward game his true policy.

It was natural that the moderate party in parliament should acquire strength by the untoward fortune of its arms. Their aim, as well as that of the constitutional royalists, was a speedy pacification; neither party so much considering what terms might be most advantageous to

[1] Both sides claimed the victory. May, who thinks that Essex, by his injudicious conduct after the battle, lost the advantage he had gained in it, admits that the effect was to strengthen the king's side. "Those who thought his success impossible began to look upon him as one who might be a conqueror, and many neuters joined him," p. 176. Ludlow is of the same opinion as to Essex's behaviour and its consequences: "Our army, after some refreshment at Warwick, returned to London, not like men that had obtained a victory, but as if they had been beaten," p. 52. This shows that they had not in fact obtained much of a victory: and lord Wharton's report to parliament almost leads us to think the advantage, upon the whole, to have been with the king. Parl. Hist. ii. 1495.

[2] May, Baillie, Mrs. Hutchinson, are as much of this opinion, as sir Philip Warwick, and other royalist writers. It is certain that there was a prodigious alarm, and almost despondency, among the parliamentarians. They immediately began to make entrenchments about London, which were finished in a month. May, p. 214. In the Somers Tracts, iv. 534., is an interesting letter from a Scotsman then in London, giving an account of these fortifications, which, considering the short time employed about them, seem to have been very respectable, and such as the king's army, with its weak cavalry and bad artillery, could not easily have carried. Lord Sunderland, four days before the battle of Newbury, wherein he was killed, wrote to his wife, that the king's affairs had never been in a more prosperous condition; that sitting down before Glocester had prevented *their finishing the war that year*, "which nothing could keep us from doing, if we had a month's more time." Sidney Letters, ii. 671. He alludes in the same letters to the divisions in the royal party.

their own side, as which way the nation might be freed from an incalculably protracted calamity. On the king's advance to Colnbrook in November 1642, the two houses made an overture for negotiation, on which he expressed his readiness to enter. But, during the parley, some of his troops advanced to Brentford, and a sharp action took place in that town. The parliament affected to consider this such a mark of perfidy and bloodthirstiness as justified them in breaking off the treaty; a step to which they were doubtless more inclined by the king's retreat, and their discovery that his army was less formidable than they had apprehended. It is very probable, or rather certain, even from Clarendon's account, that many about the king, if not himself, were sufficiently indisposed to negotiate; yet as no cessation of arms had been agreed upon, or even proposed, he cannot be said to have waved the unquestionable right of every belligerent, to obtain all possible advantage by arms, in order to treat for peace in a more favourable position. But, as mankind are seldom reasonable in admitting such maxims against themselves, he seems to have injured his reputation by this affair of Brentford.

A treaty, from which many ventured to hope much, was begun early in the next spring at Oxford, after a struggle which had lasted through the winter within the walls of parliament.[1] But though the party of Pym and Hampden at Westminster were not able to prevent negotiation against the strong bent of the house of lords, and even of the city, which had been taught to lower its tone by the interruption of trade, and especially of the supply of coals from Newcastle; yet they were powerful enough to make the houses insist on terms not less unreasonable than those contained in their nineteen propositions the year before.[2] The king could not be justly expected to comply with these; but had they been more moderate, or if the parliament would have in some measure receded from them, we have every reason to conclude, both by the nature of the terms he proposed in return, and by the positive testimony of Clarendon, that he would not have come sincerely into any scheme of immediate accommodation. The reason assigned by that author for the unwillingness of Charles to agree on a cessation of arms during the negotiation, though it had been originally suggested by himself, and which reason would have been still more applicable to a treaty of peace, is one so strange, that it requires all the authority of one very unwilling to confess any weakness or duplicity of the king to be believed. He had made a solemn promise to the queen, on her departure for Holland the year before, "that he would receive no person who had disserved him into any favour or trust, without her privity and consent: and that as she had undergone many reproaches and calum-

[1] Parl. Hist. iii. 45. 48. It seems natural to think that, if the moderate party were able to contend so well against their opponents, after the desertion of a great many royalist members who had joined the king, they would have maintained a decisive majority had these continued in their places. But it is to be considered, on the other hand, that the king could never have raised an army, if he had not been able to rally the peers and gentry round his banner, and that in his army lay the real secret of the temporary strength of the pacific party.

[2] Parl. Hist. iii. 68. 94. Clarendon, May, Whitelock. If we believe the last (p. 68.), the king, who took as usual a very active part in the discussions upon this treaty, would frequently have been inclined to come into an adjustment of terms; if some of the more warlike spirits about him, glancing apparently at Rupert, had not over persuaded his better judgment. This, however, does not accord with what Clarendon tells us of the queen's secret influence, nor indeed with all we have reason to believe of the king's disposition during the war.

nies at the entrance into the war, so he would never make any peace but by her interposition and mediation, that the kingdom might receive that blessing only from her."[1] Let this be called, as the reader may please, the extravagance of romantic affection, or rather the height of pusillanimous and criminal subserviency, we cannot surely help acknowledging that this one marked weakness in Charles's character, had there been nothing else to object, rendered the return of cordial harmony between himself and his people scarce within the bounds of natural possibility. In the equally balanced condition of both forces at this particular juncture, it may seem that some compromise on the great question of the militia was not impracticable, had the king been truly desirous of accommodation; for it is only just to remember that the parliament had good reason to demand some security for themselves, when he had so peremptorily excluded several persons from amnesty. Both parties, in truth, were standing out for more than, either according to their situation as belligerents, or even perhaps according to the principles of our constitution, they could reasonably claim; the two houses having evidently no direct right to order the military force, nor the king, on the other hand, having a clear prerogative to keep on foot an army, which is not easily distinguishable from a militia, without consent of parliament. The most reasonable course apparently would have been for the one to have waved a dangerous and disputed authority, and the other to have desisted from a still more unconstitutional pretension; which was done by the bill of rights in 1689. The kingdom might have well dispensed, in that age, with any military organization; and this seems to have been the desire of Whitelock, and probably of other reasonable men. But unhappily when swords are once drawn in civil war, they are seldom sheathed till experience has shown which blade is the sharper.

Though this particular instance of the queen's prodigious ascendancy over her husband remained secret till the publication of lord Clarendon's life, it was in general well known, and put the leaders of the commons on a remarkable stroke of policy, in order to prevent the renewal of negotiations. On her landing in the north, with a supply of money and arms, as well as with a few troops she had collected in Holland, they carried up to the lords an impeachment for high treason against her. This measure (so obnoxious was Henrietta), met with a less vigorous opposition than might be expected, though the moderate party was still in considerable force.[2] It was not only an insolence which a king, less uxorious than Charles, could never pardon; but a violation of the primary laws and moral sentiments that preserve human society,

[1] Life of Clarendon, p. 79. This induced the king to find pretexts for avoiding the cessation, and was the real cause of his refusal to restore the earl of Northumberland to his post of lord admiral during this treaty of Oxford, which was urged by Hyde. That peer was, at this time, and for several months afterwards, inclining to come over to the king: but, on the bad success of Holland and Bedford in their change of sides, he gave in to the opposite course of politics, and joined the party of lords Saye and Wharton, in determined hostility to the king.

Dr. Lingard has lately thrown doubts upon this passage in Clarendon, but upon grounds which I do not clearly understand. Hist. of Engl. x. 208. note. That no vestige of its truth should appear, as he observes, in the private correspondence between Charles and his consort, (if he means the letters taken at Naseby, and I know no other), is not very singular; as the whole of that correspondence is of a much later date.

[2] I cannot discover in the Journals any division on this impeachment. But Hollis inveighs against it in his memoirs as one of the flagrant acts of St. John's party; and there is an

to which the queen was acting in obedience. Scarce any proceeding of the long parliament seems more odious than this; whether designed by way of intimidation, or to exasperate the king, and render the composure of existing differences more impracticable.

The enemies of peace were strengthened by the discovery of what is usually called Waller's plot, a scheme for making a strong demonstration of the royalist party in London, wherein several members of both houses appear to have been more or less concerned. Upon the detection of this conspiracy, the two houses of parliament took an oath not to lay down arms so long as the papists now in arms should be protected from the justice of parliament; and never to adhere to, or willingly assist the forces raised by the king, without the consent of both houses. Every individual member of the peers and commons took this oath; some of them being then in secret concert with the king, and others entertaining intentions, as their conduct very soon evinced, of deserting to his side. (Parl. Hist. 129.) Such was the commencement of a system of perjury, which lasted for many years, and belies the pretended religion of that hypocritical age. But we may always look for this effect from oppressive power, and the imposition of political tests.

The king was now in a course of success, which made him rather hearken to the sanguine courtiers of Oxford, where, according to the invariable character of an exiled faction, every advantage or reverse brought on a disproportionate exultation or despondency, than to those better counsellors who knew the precariousness of his good fortune. He published a declaration, wherein he denied the two houses at Westminster the name of a parliament; which he could no more take from them, after the bill he had passed, than they could deprive him of his royal title, and by refusing which he shut up all avenues to an equal peace.[1] This was soon followed by so extraordinary a political error as manifests the king's want of judgment, and the utter improbability that any event of the war could have restored to England the blessings of liberty and repose. Three peers of the moderate party, the earls of Holland, Bedford, and Clare, dissatisfied with the preponderance of a violent faction in the commons, left their places at Westminster, and came into the king's quarters. It might be presumed from general policy as well as from his constant declarations of a desire to restore peace, that they would have been received with such studied courtesy as might serve to reconcile to their own mind a step which, when taken with the best intentions, is always equivocal and humiliating. There was great reason to believe that the earl of Northumberland, not only the first peer then in England as to family and fortune, but a man highly esteemed for prudence, was only waiting

account of the debate on this subject in the Somers Tracts, v. 500.; whence it appears that it was opposed by Maynard, Waller, Whitelock, and others; but supported by Pym, Strode, Long, Glynn, and by Martin with his usual fury and rudeness. The first of these carried up the impeachment to the house of lords.

This impeachment was not absolutely lost sight of for some time. In Jan. 1644, the lords appointed a committee to consider what mode of proceeding for bringing the queen to trial was most agreeable to a parliamentary way, and to peruse precedents. Parl. Hist. 194.

[1] Parl. Hist. 133. June 20. Clarendon, iv. 155. He published however a declaration soon after the taking of Bristol, containing full assurances of his determination to govern by the known laws. Parl. Hist. 144.

to observe the reception of those who went first to Oxford, before he followed their steps. There were even well-founded hopes of the earl of Essex, who, though incapable of betraying his trust as commander of the parliament's army, was both from personal and public motives disinclined to the war-party in the commons. There was much to expect from all those who had secretly wished well to the king's cause, and from those whom it is madness to reject or insult, the followers of fortune, the worshippers of power, without whom neither fortune nor power can long subsist. Yet such was the state of Charles's council-board at Oxford that some were for arresting these proselyte earls; and it was carried with difficulty, after they had been detained some time at Wallingford, that they might come to the court. But they met there with so many and such general slights, that though they fought in the king's army at Newbury, they found their position intolerably ignominious; and after about three months, returned to the parliament with many expressions of repentance, and strong testimonies to the evil counsels of Oxford.[1]

The king seems to have been rather passive in this strange piece of impolicy, but by no means to have taken the line that became him, of repressing the selfish jealousy or petty revengefulness of his court. If the earl of Holland was a man whom both he and the queen, on the score of his great obligations to them, might justly reproach with some ingratitude, there was nothing to be excepted against the other two, save their continuance at Westminster, and compliance in votes that he disliked. And if this were to be visited by neglect and discountenance, there could, it was plain, be no reconciliation between him and the parliament. For who could imagine that men of courage and honour, while possessed of any sort of strength and any hopes of preserving it, would put up with a mere indemnity for their lives and fortunes, subject to be reckoned as pardoned traitors who might thank the king for his clemency, without presuming to his favour? Charles must have seen his superiority consolidated by repeated victories, before he could prudently assume this tone of conquest. Inferior in substantial force, notwithstanding his transient advantages, to the parliament, he had no probability of regaining his station, but by defections from their banner; and these, with incredible folly, he seemed to decline; far unlike his illustrious father-in-law, who had cordially embraced the leaders of a rebellion much more implacable than the present. For the Oxford counsellors and courtiers who set themselves against the reception of the three earls, besides their

[1] Clarendon, iv. 192. 262. Whitelock, 70. They met with a worse reception at Westminster than at Oxford, as indeed they had reason to expect. A motion that the earl of Holland should be sent to the Tower was lost in the commons by only one voice. Parl. Hist. 180. They were provoked at his taking his seat without permission. After long refusing to consent, the lords agreed to an ordinance, June 29. 1644, that no peer or commoner, who had been in the king's quarters, should be admitted again to sit in either house. Parl. Hist. 271. This severity was one cause of Essex's discontent, which was increased when the commons refused him leave to take Holland with him on his expedition into the west that summer. Baillie, i. 426. Whitelock, 87. If it be asked why this Roman rigour was less impolitic in the parliament than in the king, I can only answer, that the stronger and the weaker have different measures to pursue. But relatively to the pacification of the kingdom, upon such terms as fellow-citizens ought to require from each other, it was equally blamable in both parties, or rather more so in that possessed of the greater power.

particular animosity towards the earl of Holland,[1] and that general feeling of disdain and distrust which, as Clarendon finely observes, seems by nature attached to all desertion and inconstancy, whether in politics or religion, (even among those who reap the advantage of it, and when founded upon what they ought to reckon the soundest reasons,) there seem grounds to suspect that they had deeper and more selfish designs than they cared to manifest. They had long beset the king with solicitations for titles, offices, pensions; but these were necessarily too limited for their cravings. They had sustained, many of them, great losses; they had performed real or pretended services for the king; and it is probable that they looked to a confiscation of enemies' property for their indemnification or reward. This would account for an averseness to all overtures for peace, as decided, at this period, among a great body of the cavaliers as it was with the factions of Pym or Vane.

These factions were now become finally predominant at Westminster. On the news that prince Rupert had taken Bristol, the last and most serious loss that the parliament sustained, the lords agreed on propositions for peace to be sent to the king, of an unusually moderate tone.[2] The commons, on a division of 94 to 65, determined to take them into consideration; but the lord mayor Pennington having procured an address of the city against peace, backed by a tumultuous mob, a small majority was obtained against concurring with the other house.[3] It was after this that the lords above mentioned, as well as many of the commons, quitted Westminster. The prevailing party had no thoughts of peace, till they could dictate its conditions. Through Essex's great success in raising the siege of Glocester, the most distinguished exploit in his military life, and the battle of Newbury wherein the advantage was certainly theirs, they became secure against any important attack on the king's side, the war turning again to endless sieges and skirmishes of partizans. And they now adopted two important measures, one of which gave a new complexion to the quarrel.

Littleton, the lord-keeper of the great seal, had carried it away with him to the king. This of itself put a stop to the regular course of the

[1] It is intimated by Clarendon, that some at Oxford, probably Jermyn and Digby, were jealous of Holland's recovering the influence he had possessed with the queen, who seems to have retained no resentment against him. As to Bedford and Clare, they would probably have been better received, if not accompanied by so obnoxious an intriguer of the old court. This seems to account for the unanimity which the historian describes to have been shown in the council against their favourable reception. Light and passionate tempers, like that of Henrietta, are prone to forget injuries; serious and melancholic ones, like that of Charles, never lose sight of them.

[2] Baillie deplores at this time "the horrible fears and confusions in the city, the king every where being victorious. In the city, a strong and insolent party for him," p. 391. "The malignants stirred a multitude of women of the meaner and more infamous rank to come to the door of both houses, and cry tumultuously for peace on any terms. This tumult could not be suppressed but by violence, and killing some three or four women, and hurting some of them, and imprisoning many." p. 300.

[3] Lords and Comm. Journ. Parl. Hist. 136., &c. Clarendon, iv. 183. Hollis's Memoirs. Hollis was a teller for the majority on the first occasion; he had left the warlike party some months (Baillie, i. 356.); and his name is in the journals repeatedly, from Nov. 1642, as teller against them, though he is charged with having said the year before, that he abhorred the name of accommodation. Mrs. Hutchinson, p. 296. Though a very honest, and to a certain extent, an able man, he was too much carried away by personal animosities; and as these shifted, his principles shifted also.

executive government, and to the administration of justice within the parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the great seal. It must surely excite a smile, that men who had raised armies, and fought battles against the king, should be perplexed how to get over so technical a difficulty. But the great seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of royal authority in a higher degree than the person of the king. The commons prepared an ordinance in July for making a new great seal, in which the lords could not be induced to concur till October. The royalists, and the king himself, exclaimed against this as the most audacious treason, though it may be reckoned a very natural consequence of the state in which the parliament was placed; and in the subsequent negotiations, it was one of the minor points in dispute whether he should authorise the proceedings under the great seal of the two houses, or they consent to sanction what had been done by virtue of his own.

The second measure of parliament was of greater moment and more fatal consequences. I have already mentioned the stress laid by the bigoted Scots presbyterians on the establishment of their own church-government in England. Chiefly perhaps to conciliate this people, the house of commons had entertained the bill for abolishing episcopacy; and this had formed a part of the nineteen propositions that both houses tendered to the king.[1] After the action at Brentford they concurred in a declaration to be delivered to the Scots commissioners, resident in London, wherein, after setting forth the malice of the prelatical clergy in hindering the reformation of ecclesiastical government, and professing their own desire willingly and affectionately to pursue a closer union in such matters between the two nations, they request their brethren of Scotland to raise such forces as they should judge sufficient for the securing the peace of their own borders against ill-affected persons there; as likewise, to assist them in suppressing the army of papists and foreigners, which, it was expected, would shortly be on foot in England. (Parl. Hist. iii. 15.)

This overture produced for many months no sensible effect. The Scots, with all their national wariness, suspected that in spite of these general declarations in favour of their church polity, it was not much at heart with most of the parliament, and might be given up in a treaty, if the king would concede some other matters in dispute. Accordingly, when the progress of his arms, especially in the north, during the ensuing summer, compelled the parliament to call in a more pressing manner, and by a special embassy, for their aid, they resolved to bind them down by such a compact as no wavering policy should ever rescind. They insisted therefore on the adoption of the solemn league and covenant, founded on a similar association of their own, five years before, through which they had successfully resisted the king, and overthrown the prelatic government. The covenant consisted in an oath

[1] The resolution, that government by archbishops, bishops, &c., was inconvenient, and ought to be taken away, passed both houses unanimously, Sept. 10. 1642. Parl. Hist. ii. 465. But the ordinance to carry this fully into effect was not made till Oct., 1646. Scobell's Ordinances.

to be subscribed by all sorts of persons in both kingdoms, whereby they bound themselves to preserve the reformed religion in the church of Scotland, in doctrine, worship, discipline, and government, according to the word of God and practice of the best reformed churches; and to endeavour to bring the churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church-government, directory for worship, and catechizing; to endeavour, without respect of persons, the extirpation of popery, prelacy (that is, church-government by archbishops, bishops, their chancellors and commissaries, deans and chapters, archdeacons, and all other ecclesiastical officers depending on that hierarchy,) and whatsoever should be found contrary to sound doctrine and the power of godliness; to preserve the rights and privileges of the parliaments, and the liberties of the kingdoms, and the king's person and authority, in the preservation and defence of the true religion and liberties of the kingdoms; to endeavour the discovery of incendiaries and malignants, who hinder the reformation of religion, and divide the king from his people, that they may be brought to punishment; finally, to assist and defend all such as should enter into this covenant, and not suffer themselves to be withdrawn from it, whether to revolt to the opposite party, or to give in to a detestable indifference or neutrality. In conformity to the strict alliance thus established between the two kingdoms, the Scots commissioners at Westminster were intrusted, jointly with a committee of both houses, with very extensive powers to administer the public affairs.[1]

Every member of the commons who remained at Westminster, to the number of 228, or perhaps more, and from 20 to 30 peers that formed their upper house,[2] subscribed this deliberate pledge to overturn the established church; many of them with extreme reluctance, both from a dislike of the innovation, and from a consciousness that it raised a most formidable obstacle to the restoration of peace; but with a secret reserve, for which some want of precision in the language of this covenant (purposely introduced by Vane, as is said, to shelter his own schemes) afforded them a sort of apology.[3] It was next imposed on all

[1] This committee, appointed in Feb., 1644, consisted of the following persons, the most conspicuous, at that time, of the parliament: the earls of Northumberland, Essex, Warwick, and Manchester; lords Saye, Wharton, and Roberts; Mr. Pierrepont, the two sir Henry Vanes, sir Philip Stapylton, sir William Waller, sir Gilbert Gerrard, sir William Armyn, sir Arthur Haslerig; Messrs. Crew, Wallop, St. John, Cromwell, Brown, and Glynn. Parliamentary Hist. iii. 248.

[2] Somers Tracts, iv. 533. The names marked in the Parliamentary History as having taken the covenant, are 236.

The earl of Lincoln alone, a man of great integrity and moderation, though only conspicuous in the Journals, refused to take the covenant, and was excluded in consequence from his seat in the house: but on his petition next year, though as far as appears, without compliance, was restored, and the vote rescinded. Parl. Hist. 393. He regularly protested against all violent measures; and we still find his name in the minority on such occasions after the Restoration.

Baillie says, the desertion of about six peers at this time to the king, was of great use to the passing of the covenant in *a legal way*. Vol. i. p. 390.

[3] Burnet's Mem. of Duke of Hamilton, p. 239. I am not quite satisfied as to this, which later writers seem to have taken from Burnet. It may well be supposed that the ambiguity of the covenant was not very palpable; since the Scots presbyterians, a people not easily cozened, were content with its expression. According to fair and honest rules of interpretation, it certainly bound the subscribers to the establishment of a church-government conformed to that of Scotland; namely, the presbyterian, exclusive of all mixture with any other. But Selden, and

civil and military officers, and upon all the beneficed clergy.[1] A severe persecution fell on the faithful children of the Anglican church. Many had already been sequestered from their livings, or even subjected to imprisonment, by the parliamentary committee for scandalous ministers, or by subordinate committees of the same kind set up in each county within their quarters; sometimes on the score of immoralities or false doctrine, more frequently for what they termed malignity, or attachment to the king and his party.[2] Yet wary men who meddled not with politics, might hope to elude this inquisition. But the covenant, imposed as a general test, drove out all who were too conscientious to pledge themselves by a solemn appeal to the Deity to resist the polity which they generally believed to be of his institution. What number of the clergy were ejected (most of them but for refusing the covenant, and for no moral offence or imputed superstition) it is impossible to ascertain. Walker, in his Sufferings of the Clergy, a folio volume published in the latter end of Anne's reign, with all the virulence and partiality of the high-church faction in that age, endeavoured to support those who had reckoned it at 8000; a palpable over-statement upon his own showing, for he cannot produce near 2000 names, after a most diligent investigation. Neal, however, admits 1600, probably more than one fifth of the beneficed ministers in the kingdom.[3] The biographical collections furnish a pretty copious martyrology of men the most distinguished by their learning and virtues in that age. The remorseless and indiscriminate bigotry of presbyterianism might boast that it had heaped disgrace on Walton,

the other friends of moderate episcopacy who took the covenant, justified it, I suppose, to their consciences, by the pretext that, in renouncing the jurisdiction of bishops, they meant the unlimited jurisdiction without concurrence of any presbyters. It was not, however, an action on which they could reflect with pleasure. Baxter says that Gataker, and some others of the assembly, would not subscribe the covenant, but on the understanding that they did not renounce primitive episcopacy by it. Life of Baxter, p. 48. These controversial subtleties elude the ordinary reader of history.

[1] After the war was ended, none of the king's party were admitted to compound for their estates, without taking the covenant. This Clarendon, in one of his letters, calls "making haste to buy damnation at two years' purchase." vol. ii. p. 286. Yet there must be some term to resistance.

[2] Neal, ii. 19. &c. is fair enough in censuring the committees, especially those in the country. "The greatest part [of the clergy] were cast out for malignity [attachment to the royal cause]; superstition and false doctrine were hardly ever objected; yet the proceedings of the sequestrators were not always justifiable; for whereas a court of judicature should rather be counsel for the prisoner than the prosecutor, the commissioners considered the king's clergy as their most dangerous enemies, and were ready to lay hold of all opportunities to discharge them their pulpits." p. 24. But if we can rely at all on White's Century of Malignant Ministers, and I do not perceive that Walker has been able to controvert it, there were a good many cases of irregular life in the clergy, so far at least as haunting alehouses; which, however, was much more common, and consequently less indecent in that age than at present. Baxter's Life, p. 74.; whose authority, though open to some exceptions on the score of prejudice, is at least better than Walker's.

The king's party were not less oppressive towards ministers whom they reckoned puritan: which unluckily comprehended most of those who were of strict lives, especially if they preached calvinistically, unless they redeemed that suspicion by strong demonstrations of loyalty. Neal, p. 21. Baxter's Life, p. 42. And if they put themselves forward on this side, they were sure to suffer most severely for it on the parliament's success; an ordinance of April 1. 1643, having sequestered the private estates of all the clergy who had aided the king. Thus the condition of the English clergy was every way most deplorable; and in fact they were utterly ruined.

[3] Neal, p. 93. He says it was not tendered, by favour, to some of the clergy who had not been active against the parliament, and were reputed Calvinists. p. 59. Sanderson is said to be one instance. This historian, an honest and well-natured man at bottom, justly censures its imposition.

and driven Lydiat to beggary; that it trampled on the old age of Hales, and embittered with insult the dying moments of Chillingworth.

But the most unjustifiable act of these zealots, and one of the greatest reproaches of the long parliament, was the death of archbishop Laud. In the first days of the session, while the fall of Strafford struck every one with astonishment, the commons had carried up an impeachment against him for high treason, in fourteen articles of charge; and he had lain ever since in the Tower, his revenues, and even private estate sequestered, and in great indigence. After nearly three years' neglect, specific articles were exhibited against him in October 1643, but not proceeded on with vigour till December 1644; when, for whatever reason, a determination was taken to pursue this unfortunate prelate to death. The charges against him, which Wild, Maynard, and other managers of the impeachment, were to aggravate into treason, related partly to those papistical innovations which had nothing of a political character about them, partly of the violent proceedings in the star-chamber and high-commission courts, wherein Laud was very prominent as a counsellor, but certainly without any greater legal responsibility than fell on many others. He defended himself, not always prudently or satisfactorily, but with courage and ability; never receding from his magnificent notions of spiritual power, but endeavouring to shift the blame of the sentences pronounced by the council on those who concurred with him. The imputation of popery he repelled by a list of the converts he had made; but the word was equivocal, and he could not deny the difference between his protestantism, and that of our reformation. Nothing could be more monstrous than the allegation of treason in this case. The judges, on a reference by the lords, gave it to be understood, in their timid way, that the charges contained no legal treason.[1] But, the commons having changed their impeachment into an ordinance for his execution, the peers were pusillanimous enough to comply. It is said by Clarendon that only seven lords were in the house on this occasion: but the Journals unfortunately bear witness to the presence of twenty.[2] Laud had amply merited punishment for his tyrannical abuse of power; but his execution at the age of seventy, without the slightest pretence of political necessity, was a far more unjustifiable instance of it than any that was alleged against him.

In pursuance of this treaty, the Scots army of 21,000 men marched into England in January, 1644. This was a very serious accession to Charles's difficulties, already sufficient to dissipate all hopes of final triumph, except in the most sanguine minds. His successes, in fact, had been rather such as to surprise well-judging men than to make them expect any more favourable termination of the war than by a fair treaty. From the beginning it may be said that the yeomanry and trading classes of towns were generally hostile to the king's side, even in those counties which were in his military occupation; except in a

[1] "All the judges answered that they could deliver no opinion in this case, in point of treason by the law; because they could not deliver any opinion in point of treason, but what was particularly expressed to be treason in the statute of 25 E. III., and so referred it wholly to the judgment of this house." Lords' Journals, 17th Dec., 1644.

[2] Lords' Journals, 4th Jan. It is not said to be done nem. con.

few, such as Cornwall, Worcester, Salop, and most of Wales, where the prevailing sentiment was chiefly royalist;[1] and this disaffection was prodigiously increased through the licence of his ill-paid and ill-disciplined army. On the other hand, the gentry were, in a great majority, attached to his cause, even in the parts of England which lay subject to the parliament. But he was never able to make any durable impression on what were called the associated counties, extending from Norfolk to Sussex inclusively, within which no rising could be attempted with any effect:[2] while, on the other hand, the parliament possessed several garrisons, and kept up considerable forces in that larger portion of the kingdom where he might be reckoned superior. Their resources were far greater; and the taxes imposed by them, though exceedingly heavy, more regularly paid, and less ruinous to the people, than the sudden exactions, half plunder, half contribution, of the ravenous cavaliers. The king lost ground during the winter. He had built hopes on bringing over troops from Ireland; for the sake of which he made a truce, then called the cessation, with the rebel catholics. But this reinforcement having been beaten and dispersed by Fairfax at Nantwich, he had the mortification of finding that this scheme had much increased his own unpopularity, and the distrust entertained of him even by his adherents, without the smallest advantage. The next campaign was marked by the great defeat of Rupert and Newcastle at Marston Moor, and the loss of the north of England; a blow so terrible as must have brought on his speedy ruin, if it had not been in some degree mitigated by his strange and unexpected success over Essex in the west, and by the tardiness of the Scots in making use of their victory. Upon the result of the campaign of 1644, the king's affairs were in such bad condition that nothing less than a series of victories could have reinstated them; yet not so totally ruined as to hold out much prospect of an approaching termination to the people's calamities.

There had been, from the very commencement of the war, all that distraction in the king's councils at Oxford, and all those bickerings and heart-burnings among his adherents, which naturally belong to

[1] "The difference in the temper of the common people of both sides was so great, that they who inclined to the parliament left nothing unperformed that might advance the cause; whereas they who wished well to the king thought they had performed their duty in doing so, and that they had done enough for him, in that they had done nothing against him." Clarendon, p. 3. 452. "Most of the gentry of the county (Nottinghamshire)," says Mrs. Hutchinson, "were disaffected to the parliament; most of the middle sort, the able substantial freeholders and the other commons, who had not their dependence upon the malignant nobility and gentry, adhered to the parliament." p. 81. This I conceive to have been the case in much the greater part of England. Baxter, in his Life, p. 30., says just the same thing in a passage worthy of notice. But the Worcestershire populace, he says, were violent royalists. p. 39. Clarendon observes in another place, iii. 41., "There was in this county (Cornwall), as throughout the kingdom, a wonderful and superstitious reverence towards the name of a parliament, and a prejudice to the power of the court." He afterwards, p. 436., calls "an implicit reverence to the name of a parliament, the fatal disease of the whole kingdom." So prevalent was the sense of the king's arbitrary government, especially in the case of ship-money. Warburton remarks, that he never expressed any repentance, or made any confession in his public declarations, that his former administration had been illegal. Notes on Clarendon, p. 566. But this was not, perhaps, to be expected; and his repeated promises to govern according to law might be construed into tacit acknowledgments of past errors.

[2] The associated counties, properly speaking, were at first Norfolk, Suffolk, Essex, Hertford, Cambridge; to which some others were added. Sussex, I believe, was not a part of the association; but it was equally within the parliamentary pale, though the gentry were remarkably loyal in their inclinations. The same was true of Kent.

men embarked in a dangerous cause with different motives and different views. The military men, some of whom had served with the Swedes in Germany, acknowledged no laws but those of war; and could not understand that either in annoying the enemy, or providing for themselves, they were to acknowledge any restraints of the civil power. The lawyers, on the other hand, and the whole constitutional party, laboured to keep up, in the midst of arms, the appearances at least of legal justice, and that favourite maxim of Englishmen, the supremacy of civil over military authority, rather more strictly perhaps than the nature of their actual circumstances would admit. At the head of the former party stood the king's two nephews, Rupert and Maurice, the younger sons of the late unfortunate elector palatine, soldiers of fortune (as we may truly call them), of rude and imperious characters, avowedly despising the council and the common law, and supported by Charles, with all his injudiciousness and incapacity for affairs, against the greatest men of the kingdom. Another very powerful and obnoxious faction was that of the catholics, proud of their services and sacrifices, confident in the queen's protection, and looking at least to a full toleration as their just reward. They were the natural enemies of peace, and little less hated at Oxford than at Westminster.

At the beginning of the winter of 1643, the king took the remarkable step of summoning the peers and commoners of his party to meet in parliament at Oxford. This was evidently suggested by the constitutionalists with the intention of obtaining a supply by more regular methods than forced contribution, and of opposing a barrier to the military and popish interests.[2] Whether it were equally calculated to further the king's cause may admit of some doubt. The royalist convention indeed, which name it ought rather to have taken than that of parliament, met in considerable strength at Oxford. Forty-three peers, and one hundred and eighteen commoners, subscribed a letter to the earl of Essex, expressing their anxiety for a treaty of peace; twenty-nine of the former, and fifty-seven of the latter, it is said, being then

[1] Clarendon passim, May, 160. Baillie, i. 416. See, in the Somers Tracts, v. 495., a dialogue between a gentleman and a citizen, printed at Oxford, 1643. Though of course a royalist pamphlet, it shows the disunion that prevailed in that unfortunate party, and inveighs against the influence of the papists, in consequence of which the marquis of Hertford is said to have declined the king's service. Rupert is praised, and Newcastle struck at. It is written, on the whole, in rather a lukewarm style of loyalty. The earl of Holland and sir Edward Dering gave out as their reason for quitting the king's side, that there was great danger of popery. This was much exaggerated: yet lord Sunderland talks the same language. Sidney Papers, ii. 667. Lord Falkland's dejection of spirits, and constant desire of peace, must chiefly be ascribed to his disgust with the councils of Oxford, and the greater part of those with whom he was associated.

E quel che più ti graverà le spalle
Sarà la compagnia malvagia e ria, Nelle quel tu cadrai in questa valle:

We know too little of this excellent man, whose talents, however, and early pursuits do not seem to have particularly qualified him for public life. It is evident that he did not plunge into the loyal cause with all the zeal of his friend Hyde; and the king doubtless had no great regard for the counsels of one who took so very different a view of some important matters from himself. Life of Clarendon, 48. He had been active against Strafford, and probably had a bad opinion of Laud. The prosecution of Finch for high treason he had himself moved. In the Ormond Letters, i. 20., he seems to be struck at by one writing from Oxford, June 1. 1643: "God forbid that the best of men and kings be so used by some bad hollow-hearted counsellors, who affect too much the parliamentary way. Many spare not to name them; and I doubt not but you have heard their names."

[2] It appears by the late edition of Clarendon iv. 351., that he was the adviser of calling the Oxford parliament. The former editors omitted his name.

absent on the king's service, or other occasions.[1] Such a display of numbers, nearly double in one house, and nearly half in the other, of those who remained at Westminster, might have an effect on the nation's prejudices, and at least redeem the king from the charge of standing singly against his parliament. But they came in no spirit of fervid loyalty, rather distrustful of the king, especially on the score of religion; averse to some whom he had injudiciously raised to power, such as Digby and Cottington; and so eager for pacification as not perhaps to have been unwilling to purchase it by greater concessions than he could prudently make.[2] Peace however was by no means brought nearer by their meeting; the parliament, jealous and alarmed at it, would never recognise their existence; and were so provoked at their voting the lords and commons at Westminster guilty of treason, that, if we believe a writer of high authority, the two houses unanimously passed a vote on Essex's motion, summoning the king to appear by a certain day.[3] But the Scots commissioners had force enough to turn aside such violent suggestions, and ultimately obtained the concurrence of both houses in propositions for a treaty.[4] They had begun to find themselves less likely to sway the councils of Westminster than they had expected, and dreaded the rising ascendancy of Cromwell. The treaty was opened at Uxbridge in January 1645. But neither the king nor his adversaries entered on it with minds sincerely bent on peace: they, on the one hand, resolute not to swerve from the utmost rigour of a conqueror's terms, without having conquered; and he, though more secretly, cherishing illusive hopes of a more triumphant restoration to power than any treaty could be expected to effect.[5]

The three leading topics of discussion among the negotiators at

[1] Parl. Hist. 218. The number who took the covenant appears by a list of the long parliament in the same work, vol. ii., to be 236; but twelve of these are included in both lists, having gone afterwards into the king's quarters. The remainder, about 100, were either dead since the beginning of the troubles, or for some reason absented themselves from both assemblies. Possibly the list of those who took the covenant is not quite complete; nor do I think the king had much more than about sixty peers on his side. The parliament however could not have produced thirty. Lords' Journals, Jan. 22. 1644. Whitelock, p. 80., says that 280 appeared in the house of commons, Jan. 1644, besides 100 absent in the parliament's service; but this cannot be quite exact.

[2] Rushworth Abr. v. 266. and 296.; where is an address to the king, intimating, if attentively considered, a little apprehension of popery and arbitrary power. Baillie says, in one of his letters, "The first day the Oxford parliament met, the king made a long speech; but many being ready to give in papers for the removing of Digby, Cottington, and others from court, the meeting was adjourned for several days." i. 429. Indeed, the restoration of Cottington, and still more of Windebank, to the king's councils, was no pledge of protestant or constitutional measures. This opposition, so natural to parliaments in any circumstances, disgusted Charles. In one of his letters to the queen, he congratulates himself on being "freed from the place of all mutinous motions, his mongrel parliament." It may be presumed, that some of those who obeyed the king's summons to Oxford, were influenced less by loyalty than a consideration that their estates lay in parts occupied by his troops; of course the same is applicable to the Westminster parliament.

[3] Baillie, 441. I can find no mention of this in the Journals; but as Baillie was then in London, and in constant intercourse with the leaders of parliament, there must have been some foundation for his statement, though he seems to have been inaccurate as to the fact of the vote.

[4] Parl Hist. 299. et post. Clarendon, v. 16. Whitelock, 110. &c. Rush. Abr. v. 449, &c.

[5] It was impossible for the king to avoid this treaty. Not only his Oxford parliament, as might naturally be expected, were openly desirous of peace, but a great part of the army had, in August, 1644, while opposed to that of Essex in the west, taken the extraordinary step of sending a letter to that general, declaring their intentions for the rights and liberties of the people, privileges of parliament, and protestant religion against popish innovations; and that

Uxbridge were the church, the militia, and the state of Ireland. Bound by their unhappy covenant, and watched by their Scots colleagues, the English commissioners on the parliament side demanded the complete establishment of a presbyterian polity, and the substitution of what was called the directory for the Anglican liturgy. Upon this head there was little prospect of a union. The king had deeply imbibed the tenets of Andrews and Laud, believing an episcopal government indispensably necessary to the valid administration of the sacraments, and the very existence of a Christian church. The Scots, and a portion of the English clergy, were equally confident that their presbyterian form was established by the apostles as a divine model, from which it was unlawful to depart.[1] Though most of the laity in this kingdom entertained less narrow opinions, the parliamentary commissioners thought the king ought rather to concede such a point than themselves, especially as his former consent to the abolition of episcopacy in Scotland weakened a good deal the force of his plea of conscience; while the royalists, even could they have persuaded their master, thought episcopacy, though not absolutely of divine right (a notion which they left to the churchmen), yet so highly beneficial to religion, and so important to the monarchy, that nothing less than extreme necessity, or at least the prospect of a signal advantage, could justify its abandonment. They offered however what in an earlier stage of their dissensions would have satisfied almost every man, that limited scheme of episcopal hierarchy, above mentioned as approved by Usher, rendering the bishop among his presbyters much like the king in parliament, not free to exercise his jurisdiction, nor to confer orders without their consent, and offered to leave all ceremonies to the minister's discretion. Such a compromise would probably have pleased the English nation, averse to nothing in their established church except its abuses; but the parliamentary negotiators would not so much as enter into discussion upon it.[2]

on the faith of subjects, the honour and reputation of gentlemen and soldiers, they would with their lives maintain that which his majesty should publicly promise, in order to a bloodless peace; they went on to request that Essex, with six more, would meet the general (earl of Brentford) with six more, to consider of all means possible to reconcile the unhappy differences and misunderstandings that have so long afflicted the kingdom. Sir Edward Walker's Historical Discourses, 59. The king was acquainted with this letter before it was sent, but after some hands had been subscribed to it. He consented, but evidently with great reluctance, and even indignation; as his own expressions testify in this passage of Walker, whose manuscript here, as in many other places, contains interlineations by Charles himself. It was doubtless rather in a mutinous spirit, which had spread widely through the army, and contributed to its utter ruin in the next campaign. I presume it was at the king's desire that the letter was signed by the general, as well as by prince Maurice, and all the colonels, I believe, in his army, to take off the appearance of a faction; but it certainly originated with Wilmot, Percy, and some of those whom he thought ill affected. See Clarendon, iv., 527. et post. Rushw. Abr. v. 348. 358.

[1] The king's doctors, Steward and Sheldon, argued at Uxbridge that episcopacy was jure divino; Henderson and others that presbytery was so. Whitelock, 132. These churchmen should have been locked up like a jury, without food or fire, till they agreed.

If we may believe Clarendon, the earl of Loudon offered in the name of the Scots, that if the king would give up episcopacy, they would not press any of the other demands. It is certain, however, that they would never have suffered him to become the master of the English parliament; and, if this offer was sincerely made, it must have been from a conviction that he could not become such.

[2] Rushworth, Whitelock, Clarendon. The latter tells in his life, which reveals several things not found in his history, that the king was very angry with some of his Uxbridge commissioners, especially Mr. Bridgman, for making too great concessions with respect to episcopacy. He lived however to make himself much greater.

They were hardly less unyielding on the subject of the militia. They began with a demand of naming all the commanders by sea and land, including the lord-lieutenant of Ireland and all governors of garrisons, for an unlimited time. The king, though not very willingly, proposed that the command should be vested in twenty persons, half to be named by himself, half by the parliament, for the term of three years, which he afterwards extended to seven; at the expiration of which time it should revert to the crown. But the utmost concession that could be obtained from the other side was to limit their exclusive possession of this power to seven years, leaving the matter open for an ulterior arrangement by act of parliament at their termination. (Whitelock, 133.) Even if this treaty had been conducted between two belligerent states, whom rivalry or ambition often excite to press every demand which superior power can extort from weakness, there yet was nothing in the condition of the king's affairs which should compel him thus to pass under the yoke, and enter his capital as a prisoner. But we may also remark that, according to the great principle, that the English constitution, in all its component parts, was to be maintained by both sides in this contest, the question for parliament was not what their military advantages or resources for war entitled them to ask, but what was required for the due balance of power under a limited monarchy. They could rightly demand no further concession from the king than was indispensable for their own and the peoples' security; and I leave any one who is tolerably acquainted with the state of England at the beginning of 1645, to decide whether their privileges and the public liberties incurred a greater risk, by such an equal partition of power over the sword as the king proposed, than his prerogative and personal freedom would have encountered by abandoning it altogether to their discretion. I am far from thinking that the acceptance of the king's propositions at Uxbridge would have restored tranquillity to England. He would still have repined at the limitations of monarchy, and others would have conspired against its existence. But of the various consequences which we may picture to ourselves as capable of resulting from a pacification, that which appears to me the least likely is, that Charles should have re-established that arbitrary power which he had exercised in the earlier period of his reign. Whence, in fact, was he to look for assistance? Was it with such creatures of a court as Jermyn or Ashburnham, or with a worn-out veteran of office, like Cottington, or a rash adventurer, like Digby, that he could outwit Vane, or overawe Cromwell, or silence the press and the pulpit, or strike with panic the stern puritan and the confident fanatic? Some there were, beyond question, both soldiers and courtiers, who hated the very name of a limited monarchy, and murmured at the constitutional language which the king, from the time he made use of the pens of Hyde and Falkland, had systematically employed in his public declarations.[1] But it is as certain that the great majority of his Oxford parliament, and of those upon whom he must have depended,

[1] The creed of this party is set forth in the Behemoth of Hobbes; which is, in other words, the application of those principles of government which are laid down in the Leviathan, to the constitution and state of England in the civil war. It is republished in Baron Maseres's Tracts, ii. 565. 567. Sir Philip Warwick in his Memoirs, 198., hints something of the same kind.

either in the field or in the council, were apprehensive of any victory that might render him absolute, as that Essex and Manchester were unwilling to conquer at the expense of the constitution.[1] The catholics indeed, generally speaking, would have gone great lengths in asserting his authority. Nor is this any reproach to that body, by no means naturally less attached to their country and its liberties than other Englishmen, but driven by an unjust persecution to see their only hope of emancipation in the nation's servitude. They could not be expected to sympathize in that patriotism of the seventeenth century, which, if it poured warmth and radiance on the protestant, was to them as a devouring fire. But the king could have made no use of the catholics, as a distinct body for any political purpose, without uniting all other parties against him. He had already given so much offence, at the commencement of the war, by accepting the services which the catholic gentry were forward to offer, that instead of a more manly justification, which the temper of the times, he thought, did not permit, he had recourse to the useless subterfuges of denying or extenuating the facts, and even to a strangely improbable recrimination ; asserting, on several occasions, that the number of papists in the parliament's army was much greater than in his own.[2]

It may still indeed be questioned whether, admitting the propositions tendered to the king to have been unreasonable and insecure, it might not yet have been expedient, in the perilous condition of his affairs, rather to have tried the chances of peace than those of war. If he could have determined frankly and without reserve to have relinquished the church, and called the leaders of the presbyterian party in both houses to his councils, it is impossible to prove that he might not both have regained his power over the militia in no long course of time, and prevailed on the parliament to consent to its own dissolution. The dread that party felt of the republican spirit rising amongst the inde-

[1] Warburton, in the notes subjoined to the late edition of Clarendon, vii. 563., mentions a conversation he had with the duke of Argyle and lord Cobham (both soldiers, and the first a distinguished one) as to the conduct of the king and the earl of Essex after the battle of Edgehill. They agreed it was inexplicable on both sides by any military principle. Warburton explained it by the unwillingness to be *too victorious*, felt by Essex himself, and by those whom the king was forced to consult. Father Orleans, in a passage with which the bishop probably was acquainted, confirms this ; and his authority is very good as to the secret of the court. Rupert, he says, proposed to march to London. "Mais l'esprit Anglois, qui ne se dement point même dans les plus attachés à la royauté, l'esprit Anglois, dis-je, toujours entêté de ces libertéz si funestes au repos de la nation, porta la plus grande partie du conseil á s'opposer à ce dessein. Le prétexte fut qu'il étoit dangereux pour le roy de l'entreprendre, et pour la ville que le prince Robert l'exécutât, jeune comme il étoit, emporté, et capable d'y mettre le feu. La vraie raison étoit qu'ils craignoient que, si le roy entroit dans Londres les armes à la main, il ne prétendist sur la nation une espèce de droit de conquête, qui le rendist trop absolu." Revolut. d'Angleterre, iii. 104.

[2] Rushworth, iv. 550. At the very time that he was publicly denying his employment of papists, he wrote to Newcastle, commanding him to make use of all his subjects' services, without examining their consciences, except as to loyalty. Ellis's Letters, iii. 291., from an original in the Museum. No one can rationally blame Charles for any thing in this, but his inveterate and useless habit of falsehood. Clarendon, iii. 610.

It is probable that some foreign catholics were in the parliament's service. But Dodd says, with great appearance of truth, that no one English gentleman of that persuasion was in arms on their side. Church History of Engl., iii. 28. He reports as a matter of hearsay, that out of about five hundred gentlemen who lost their lives for Charles in the civil war, one hundred and ninety-four were catholics. They were, doubtless a very powerful faction in the court and army. Lord Spencer, (afterwards earl of Sunderland), in some remarkable letters to his wife from the king's quarters at Shrewsbury, in Sept., 1642, speaks of the insolency of the papists with great dissatisfaction. Sidney Papers, ii. 667

pendents, would have induced them to place in the hands of any sovereign they could trust, full as much authority as our constitution permits. But no one who has paid attention to the history of that period, will conclude that they could have secured the king against their common enemy, had he even gone wholly into their own measures.[1] And this were to suppose such an entire change in his character, and ways of thinking, as no external circumstances could produce. Yet his prospects from a continuance of hostilities were so unpromising that most of the royalists would probably have hailed his almost unconditional submission at Uxbridge. Even the steady Richmond and Southampton, it is said, implored him to yield, and deprecated his misjudging confidence in promises of foreign aid, or in the successes of Montrose.[2] The more lukewarm or discontented of his adherents took this opportunity of abandoning an almost hopeless cause; between the breach of the treaty of Uxbridge and the battle of Naseby, several of the Oxford peers came over to the parliament, and took an engagement never to bear arms against it. A few instances of such defection had occurred before.[3]

It remained only, after the rupture of the treaty at Uxbridge, to try once more the fortune of war. The people, both in the king's and parliament's quarters, but especially the former, heard with dismay that peace could not be attained. Many of the perpetual skirmishes and captures of towns which made every man's life and fortune precarious, have found no place in general history; but may be traced in the journal of Whitelock, or in the Mercuries and other fugitive sheets, great numbers of which are still extant. And it will appear, I believe, from these, that scarcely one county in England was exempt, at one time or other of the war, from becoming the scene of this unnatural contest. Compared indeed with the civil wars in France in the preceding century, there had been fewer acts of enormous cruelty, and less atrocious breaches of public faith. But much blood had been wantonly shed, and articles of capitulation had been very indifferently kept. "Either side," says Clarendon, "having somewhat to object to the other, the requisite honesty and justice of observing conditions was mutually, as it were by agreement, for a long time violated."[4] The royalist army, especially the cavalry, commanded by men either wholly unprincipled, or at least regardless of the people, and deeming them ill affected, the princes Rupert and Maurice, Goring and Wilmot, lived without restraint of law or military discipline, and committed every

[1] It cannot be doubted, and is admitted in a remarkable conversation of Hollis and Whitelock with the king at Oxford in Nov., 1644, that the exorbitant terms demanded at Uxbridge were carried by the violent party, who disliked all pacification. Whitelock, 113.

[2] Baillie, ii. 91. He adds, "That which has been the greatest snare to the king is the unhappy success of Montrose in Scotland." There seems indeed great reason to think that Charles, always sanguine, and incapable of calculating probabilities, was unreasonably elated by victories from which no permanent advantage ought to have been expected. Burnet confirms this on good authority. Introduction to Hist. of his Times, 51.

[3] Whitelock, 109. 137. 142. Rushw. v. 163. The first *rat* (except indeed the earls of Holland and Bedford, who were rats with two tails), was sir Edward Dering, who came into the parliament's quarters, Feb. 1644. He was a weak man of some learning, who had already played a very changeable part before the war.

[4] A flagrant instance of this was the plunder of Bristol by Rupert, in breach of the capitulation. I suspect that it was the policy of one party to exaggerate the cruelties of the other; but the short narratives dispersed at the time give a wretched picture of slaughter and devastation.

excess even in friendly quarters.[1] An ostentatious dissoluteness became characteristic of the cavalier, as a formal austerity was of the puritan; one spoiling his neighbour in the name of God, the other of the king. The parliament's troops were not quite free from these military vices, but displayed them in a much less scandalous degree, owing to their more religious habits and the influence of their presbyterian chaplains, to the better example of their commanders, and to the comparative, though not absolute, punctuality of their pay. (Clarendon and Baxter.) But this pay was raised through unheard-of assessments, especially an excise on liquors, a new name in England, and through the sequestration of the estates of all the king's adherents: resources of which he also had availed himself, partly by the rights of war, partly by the grant of his Oxford parliament.[2]

A war so calamitous seemed likely to endure till it had exhausted the nation. With all the parliament's superiority, they had yet to subdue nearly half the kingdom. The Scots had not advanced southward, content with reducing Newcastle, and the rest of the northern counties. These they treated almost as hostile, without distinction of parties, not only exacting contributions, but committing, unless they are much belied, great excesses of indiscipline; their presbyterian gravity not having yet overcome the ancient national propensities.[3] In the mid-

[1] Clarendon and Whitelock passim. Baxter's Life, p. 44. 55. This license of Maurice's and Goring's armies in the west first led to the defensive insurrection, if so it should be called, of the clubmen: that is, of yeomen and country people, armed only with clubs, who hoped, by numbers and concert, to resist effectually the military marauders of both parties, declaring themselves neither for king nor parliament, but for their own liberty and property. They were of course regarded with dislike on both sides: by the king's party when they first appeared in 1644, because they crippled the royal army's operations, and still more openly by the parliament next year, when they opposed Fairfax's endeavour to carry on the war in the counties bordering on the Severn. They appeared at times in great strength; but, of course, the want of arms and discipline made it not very difficult to suppress them. Clarendon, v. 197. Whitelock, 137. Parl. Hist. 379. 390.

The king himself, whose disposition was very harsh and severe, except towards the few he took into his bosom, can hardly be exonerated from a responsibility for some acts of inhumanity; see Whitelock, 67., and Somers Tracts, iv. 502.; v. 369.; Maseres's Tracts, i. 144., for the ill treatment of prisoners: and he might probably have checked the outrages which took place at the storming of Leicester, where he was himself present. Certainly no imputation of this nature can be laid at the door of the parliamentary commanders; though some of them were guilty of the atrocity of putting their Irish prisoners to death, in obedience, however, to an ordinance of parliament. Parl. Hist. iii. 295.; Rushworth, v. 402. It passed Oct. 24. 1644, and all remissness in executing it was to be reckoned a favouring of the Irish rebellion: When we read, as we do perpetually, these violent and barbarous proceedings of the parliament, is it consistent with honesty or humanity to hold up that assembly to admiration, while the faults on the king's side are studiously aggravated? The partiality of Oldmixon, Harris, Macauley, and now of Brodie and Godwin, is full as glaring, to say the very least, as that of Hume.

[2] The excise was first imposed by an ordinance of both houses in July, 1643, (Husband's Collection of Ordinances, p. 267.), and afterwards by the king's convention at Oxford. See a view of the financial expedients adopted by both parties in Lingard, x. 243. The plate brought in to the parliament's commissioners at Guildhall, in 1642, for which they allowed the value of the silver, and one shilling per ounce more, is stated by Neal at 1,267,326*l.*, an extraordinary proof of the wealth of London; yet I do not know his authority, though it is probably good. The university of Oxford gave all they had to the king; but could not of course vie with the citizens.

The sums raised within the parliament's quarters from the beginning of the war to 1647, are reckoned in a pamphlet of that year, quoted in Sinclair's Hist. of the Revenue, i. 283., at 17,512,400*l.* But I find this written at random. The contributions, however, were really very great; and, if we add those to the king, and the loss by waste and plunder, we may form some judgment of the effects of the civil war.

[3] The independents raised loud clamours against the Scots army; and the northern counties naturally complained of the burthen of supporting them as well as of their excesses. Many passages in Whitelock's journal during 1645 and 1646 relate to this. Hollis endeavours to deny

land and western parts the king had just the worse, without having sustained material loss; and another summer might pass away in marches and counter-marches, in skirmishes of cavalry, in tedious sieges of paltry fortifications, some of them mere country houses, which nothing but an amazing deficiency in that branch of military science could have rendered tenable. This protraction of the war had long given rise to no unnatural discontent with its management, and to suspicions, first of Essex, then of Manchester and others in command, as if they were secretly reluctant to complete the triumph of their employers. It is indeed not impossible that both these peers, especially the former, out of their desire to see peace restored on terms compatible with some degree of authority in the crown, and with the dignity of their own order, did not always press their advantages against the king as if he had been a public enemy.[1] They might have thought that, having drawn the sword avowedly for the preservation of his person and dignity, as much as for the rights and liberties of the people, they were no further bound by their trust than to render him and his adherents sensible of the impracticability of refusing their terms of accommodation.

There could however be no doubt that Fairfax and Cromwell were far superior, both by their own talents for war and the discipline they had introduced into their army, to the earlier parliamentary commanders, and that, as a military arrangement, the self-denying ordinance was judiciously conceived. This, which took from all members of both houses their commands in the army, or civil employments, was, as is well known, the first great victory of the independent party, which had grown up lately in parliament under Vane and Cromwell.[2] They carried another measure of no less importance, collateral to the former;

or extenuate the charges; but he is too prejudiced a writer, and Baillie himself acknowledges a great deal. Vol. ii. p. 138. 142. 106.

[1] The chief imputation against Manchester was for not following up his victory in the second battle of Newbury, with which Cromwell openly taxed him; Ludlow, i. 133. There certainly appears to have been a want of military energy on this occasion; but it is said by Baillie (ii. 76.) that all the general officers, Cromwell not excepted, concurred in Manchester's determination. Essex had been suspected from the time of the affair at Brentford, or rather from the battle of Edgehill (Baillie and Ludlow); and his whole conduct, except in the celebrated march to relieve Gloucester, confirmed a reasonable distrust either of his military talents, or of his zeal in the cause. "He loved monarchy and nobility," says Whitelock. p. 108., "and dreaded those who had a design to destroy both." Yet Essex was too much a man of honour to enter on any private intrigues with the king. The other peers employed under the parliament, Stamford, Denbigh, Willoughby, were not successful enough to redeem the suspicions that fell upon their zeal.

All our republican writers, such as Ludlow and Mrs. Hutchinson in that age, Mrs. Macauley and Mr. Brodie more of late, speak acrimoniously of Essex. "Most will be of opinion," says Mr. B., (History of British Empire, iii. 565.) "that as ten thousand pounds a year out of the sequestered lands were settled upon him for his services, he was rewarded infinitely beyond his merits." The reward was doubtless magnificent; but the merit of Essex was this, that he made himself the most prominent object of vengeance in case of failure, by taking the command of an army to oppose the king in person at Edgehill: a command of which no other man in his rank was capable, and which could not, at that time, have been intrusted to any man of inferior rank without dissolving the whole confederacy of the parliament.

It is to be observed, that the two battles of Newbury, like that of Edgehill, were by no means decisive victories on the side of the parliament; and that it is not clear whether either Essex or Manchester could have pushed the king much more than they did. Even after Naseby, his party made a pretty long resistance, and he was as much blamed as they for not pressing his advantages with vigour.

[2] It had been voted by the lords a year before, Dec. 12. 1643, "That the opinion and resolution of this house is from henceforth not to admit the members of either house of parliament into any place or office, excepting such places of great trust as are to be executed by persons

the new-modelling, as it was called, of the army; reducing it to twenty one or twenty-two thousand men; discharging such officers and soldiers as were reckoned unfit, and completing their regiments by more select levies. The ordinance, after being once rejected by the lords, passed their house with some modifications in April.[1] But many joined them on this occasion for those military reasons which I have mentioned, deeming almost any termination of the war better than its continuance. The king's rejection of their terms at Uxbridge had disgusted some of the more moderate men, such as the earl of Northumberland and Pierrepoint; who deeming reconciliation impracticable, took from this time a different line of politics from that they had previously followed, and were either not alive to the danger of new-modelling the army, or willing to hope that it might be disbanded before that danger could become imminent. From Fairfax too, the new general, they saw little to fear and much to expect; while Cromwell, as a member of the house of commons, was positively excluded by the ordinance itself. But through a successful intrigue of his friends, this great man, already not less formidable to the presbyterian faction than to the royalists, was permitted to continue lieutenant-general. (Whitelock, p. 145.) The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over the king and the monarchy, but over the parliament and the nation.

It does not appear to me that a brave and prudent man, in the condition of Charles the First, had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeful tide of fortune. I cannot therefore blame him either for refusing unreasonable terms of accommodation, or for not relinquishing altogether the contest. But, after his defeat at Naseby, his affairs were, in a military sense, so irretrievable that in prolonging the war with as much obstinacy as the broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents which has been sometimes imputed to him. There was, from the hour of that battle, one only safe and honourable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means

of eminency and known integrity, and are necessary for the government and safety of the kingdom." But a motion to make this resolution into an ordinance was carried in the negative. Lords' Journals. Parl. Hist. 187. The first motion had been for a resolution without this exception, that no place of profit should be executed by the members of either house.

[1] Whitelock, p. 118. 120. It was opposed by him, but supported by Pierrepoint, who carried it up to the lords. The lords were chiefly of the presbyterian party; though Saye, Wharton, and a few more, were connected with the independents. They added a proviso to the ordinance raising forces to be commanded by Fairfax, that no officer refusing the covenant should be capable of serving, which was thrown out in the lower house. But another proviso was carried in the commons by 82 to 63, that the officers, though appointed by the general, should be approved by both houses of parliament. Cromwell was one of the tellers for the minority. Commons' Journals, Feb. 7. and 13. 1645.

In the original ordinance the members of both houses were excluded during the war; but in the second, which was carried, the measure was not made prospective. This, which most historians have overlooked, is well pointed out by Godwin. By virtue of this alteration, many officers were elected in the course of 1645 and 1646; and the effect, whatever might be designed, was very advantageous to the republican and independent factions.

necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction, hopes of regaining power through the disunion of his enemies, might have been entertained with better reason, as with greater safety, in a foreign land. It is not perhaps very probable that he would have been restored; but his restoration in such circumstances seems less desperate than through any treaty that he could conclude in captivity at home.

Whether any such thoughts of abandoning a hopeless contest were ever entertained by the king during this particular period, it is impossible to pronounce; we should infer the contrary from all his actions. It must be said that many of his counsellors seem to have been as pertinacious as himself, having strongly imbibed the same sanguine spirit, and looking for deliverance, according to their several fancies, from the ambition of Cromwell or the discontent of the Scots. But, whatever might have been the king's disposition, he would not have dared to retire from England. That sinister domestic rule, to which he had been so long subject, controlled every action. Careless of her husband's happiness, and already attached probably to one whom she afterward's married, Henrietta longed only for his recovery of a power which would become her own.[1] Hence, while she constantly laid her injunctions on Charles never to concede any thing as to the militia or the Irish catholics, she became desirous, when no other means presented itself, that he should sacrifice what was still nearer to his heart, the episcopal church-government. The queen-regent of France, whose sincerity in desiring the king's restoration there can be no ground to deny,[2] was equally persuaded that he could hope for it on no less painful conditions. They reasoned of course very plausibly from the great precedent of flexible consciences, the reconciliation of Henrietta's illustrious father to the catholic church. As he could neither have regained his royal power, nor restored peace to France without this compliance with his subjects' prejudices, so Charles could still less expect, in circumstances by no means so favourable, that he should

[1] Whether there are sufficient grounds for concluding that Henrietta's connexion with Jermyn was criminal, I will not pretend to decide; though Warburton has settled the matter in a very summary style. See one of his notes on Clarendon, vol. vii. p. 636. But I doubt whether the bishop had authority for what he there says, though it is likely enough to be true. See also a note of Lord Dartmouth on Burnet, i. 63.

[2] Clarendon speaks often in his History, and still more frequently in his private letters, with great resentment of the conduct of France and sometimes of Holland, during our civil wars. I must confess that I see nothing to warrant this. The States-General, against whom Charles had so shamefully been plotting, interfered as much for the purpose of mediation as they could with the slightest prospect of success, and so as to give offence to the parliament (Rushworth v. 567.; Baillie, ii. 78.; Whitelock, 141. 148.; Harris's Life of Cromwell, 246.); and as to France, though Richelieu had instigated the Scots malecontents, and possibly those of England, yet after his death, in 1642, no sort of suspicion ought to lie on the French government; the whole conduct of Anne of Austria having been friendly, and both the mission of Harcourt in 1643, and the present negotiations of Montreuil and Bellievre, perfectly well intended. That Mazarin made promises of assistance which he had no design nor perhaps any power to fulfil, is true; but this is the common trick of such statesmen, and argues no malevolent purpose. But Hyde, out of his just dislike of the queen, hated all French connexions; and his passionate loyalty made him think it a crime, or at least a piece of base pusillanimity, in foreign states, to keep on any terms with the rebellious parliament. The case was altered, after the retirement of the regent Anne from power: Mazarin's later conduct was, as is well known, exceedingly adverse to the royal cause.

avoid a concession, in the eyes of almost all men but himself, of incomparably less importance. It was in expectation of this sacrifice that the French envoy, Montreuil, entered on his ill-starred negotiation for the king's taking shelter with the Scots army. And it must be confessed that several of his best friends were hardly less anxious that he should desert a church he could not protect.[1] They doubted not, reasoning from their own characters, that he would ultimately give way. But that Charles, unchangeably resolved on this head,[2] should have put himself in the power of men full as bigoted as himself (if he really conceived that the Scots presbyterians would shed their blood to re-establish the prelacy they abhorred), was an additional proof of that delusion which made him fancy that no government could be established without his concurrence; unless indeed we should rather consider it as one of those desperate courses, into which he who can foresee nothing but evil from every calculable line of action will sometimes plunge at a venture, borrowing some ray of hope from the uncertainty of its consequences.[3]

It was an inevitable effect of this step, that the king surrendered his personal liberty, which he never afterwards recovered. Considering his situation, we may at first think the parliament tolerably moderate, in offering nearly the same terms of peace at Newcastle which he had rejected at Uxbridge; the chief difference being, that the power of the militia which had been demanded for commissioners nominated and removable by the two houses during an indefinite period, was now proposed to reside in the two houses for the space of twenty years, which rather more unequivocally indicated their design of making the parliament perpetual.[4] But in fact they had so abridged the royal prerogative by their former propositions, that, preserving the decent semblance of monarchy, scarce any thing farther could be exacted. The

[1] Colepepper writes to Ashburnham, in Feb., 1646. to advance the Scots' treaty with all his power. "It is the only way left to save the crown and the kingdom; all other tricks will deceive you. . . . It is no time to dally on distinctions and criticisms. All the world will laugh at them when a crown is in question." Clar. Papers, ii. 207.

The king had positively declared his resolution not to consent to the establishment of presbytery. This had so much disgusted both the Scots and English presbyterians (for the latter had been concerned in the negotiations), that Montreuil wrote to say he thought they would rather make it up with the independents than treat again. "De sorte qu'il ne faut plus marchander, et que V. M. se doit hâter d'envoyer aux deux parlemens son consentiment aux trois propositions d'Uxbridge; ce qu'étant fait, elle sera en sureté dans l'armée d'Ecosse." (15th Jan. 1646.) P. 211.

[2] "I assure you," he writes to Capel, Hopton, &c., Feb. 2. 1646, "whatever paraphrases or prophecies may be made upon my last message (pressing the two houses to consent to a personal treaty), I shall never part with the church, the essentials of my crown, or my friends." P. 206. Baillie could not believe the report that the king intended to take refuge in the Scots army, as "there would be no shelter there for him, unless he would take the covenant, and follow the advice of his parliament. Hard pills to be swallowed by a wilful and an unadvised prince." Vol. ii. p. 203.

[3] Not long after the king had taken shelter with the Scots, he wrote a letter to Ormond, which was intercepted, wherein he assured him of his expectation that their army would join with his, and act in conjunction with Montrose, to procure a happy peace and the restoration of his rights. Whitelock, p. 208. Charles had bad luck with his letters, which fell, too frequently for his fame and interests, into the hands of his enemies. But who, save this most ill-judging of princes, would have entertained an idea that the Scots presbyterian army would co-operate with Montrose, whom they abhorred, and very justly, for his treachery and cruelty, above all men living?

[4] Parl. Hist. 499. Whitelock, 215. 218. It was voted, 17th June, that after these twenty years, the king was to exercise no power over the militia without the previous consent of parliament, who were to pass a bill at any time respecting it, if they should judge the kingdom's safety to be concerned, which should be valid without the king's assent. Commons' Journal.

king's circumstances were, however, so altered, that, by persisting in his refusal of those propositions, he excited a natural indignation at his obstinacy in men who felt their own right (the conqueror's right) to dictate terms at pleasure. Yet this might have had a nobler character of firmness, if during all the tedious parleys of the last three years of his life, he had not, by tardy and partial concessions, given up so much of that for which he contended, as rather to appear like a pedlar haggling for the best bargain, than a sovereign unalterably determined by conscience and public spirit. We must, however, forgive much to one placed in such unparalleled difficulties. Charles had to contend, during his unhappy residence at Newcastle, not merely with revolted subjects in the pride of conquest, and with bigoted priests, as blindly confident in one set of doubtful propositions as he was in the opposite, but with those he had trusted the most, and loved the dearest. We have in the Clarendon State Papers a series of letters from Paris, written, some by the queen, others jointly by Colepepper, Jerymn, and Ashburnham, or the two former, urging him to sacrifice episcopacy, as the necessary means of his restoration. We have the king's answers, that display, in an interesting manner, the struggles of his mind under this severe trial.[1] No candid reader, I think, can doubt that a serious sense of obligation was predominant in Charles's persevering fidelity to the English church. For though he often alleges the incompatibility of presbyterianism with monarchy, and says very justly, "I am most confident, that religion will much sooner regain the militia than the militia will religion,"[2] yet these arguments seem rather intended to weigh with those who slighted his scruples, than the paramount motives of his heart. He could hardly avoid perceiving that, as Colepepper told him in his rough style, the question was, whether he would choose to be a king of presbytery or no king. But the utmost length which he could prevail on himself to go was to offer the continuance of the presbyterian discipline, as established by the parliament, for three years, during which a conference of divines might be had, in order to bring about a settlement. Even this he would not propose without consulting two bishops, Juxon and Duppa, whether he could lawfully do so. They returned a very cautious answer, assenting to the pro-

[1] P. 248. "Show me any precedent," he says in another place, "wherever presbyterian government and regal was together without perpetual rebellions, which was the cause that necessitated the king my father to change that government in Scotland. And even in France, where they are but on tolerance, which in likelihood shall cause moderation, did they ever sit still so long as they had power to rebel? And it cannot be otherwise; for the ground of their doctrine is anti-monarchical." P. 260. See also p. 273.

[2] "The design is to unite you with the Scots nation and the presbyterians of England against the anti-monarchical party, the independents. . . . If by conscience it is intended to assert that episcopacy is jure divino exclusive, whereby no protestant, or rather Christian church can be acknowledged for such without a bishop, we must therein crave leave wholly to differ. And if we be in an error, we are in good company, there not being, as we have cause to believe, six persons of the protestant religion of the other opinion. . . . . Come, the question in short is, whether you will choose to be a king of presbytery, or no king, and yet presbytery or perfect independency to be?" P. 263. They were however as much against his giving up the militia, or his party, as in favour of his abolishing episcopacy.

Charles was much to be pitied throughout all this period; none of his correspondents understood the state of affairs so well as himself: he was with the Scots, and saw what they were made of, while the others fancied absurdities through their own private self-interested views. It is very certain that by sacrificing episcopacy he would not have gained a step with the parliament; and as to reigning in Scotland alone, suspected, insulted, degraded, this would perhaps just have been possible for himself; but neither Henrietta nor her friends would have found an asylum there.

position as a temporary measure, but plainly endeavouring to keep the king fixed in his adherence to the episcopal church.[1]

Pressed thus on a topic, so important above all others in his eyes, the king gave a proof of his sincerity by greater concessions of power than he had ever intended. He had some time before openly offered to let the parliament name all the commissioners of the militia for seven years, and all the officers of state and judges to hold their places for life.[2] He now empowered a secret agent in London, Mr. William Murray, privately to sound the parliamentary leaders, if they would consent to the establishment of a moderated episcopacy, after three or five years, on condition of his departing from the right of the militia during his whole life. (Clar. Papers, p. 275.) This dereliction of the main ground of contest brought down the queen's indignation on his head. She wrote several letters in an imperious and unfeeling tone, declaring that she would never set her foot in England as long as the parliament should exist.[3] Jermyn and Colepepper assumed a style hardly less dictatorial in their letters, (P. 301.), till Charles withdrew the proposal, which Murray seems never to have communicated. (P. 313.) It was indeed the evident effect of despair and a natural weariness of his thorny crown. He now began to express serious thoughts of making his escape,[4] and seems even to hint more than once at a resignation of his government to the Prince of Wales. But Henrietta forbad him to think of an escape, and alludes to the other with contempt and indignation.[5] With this selfish and tyrannical woman, that

[1] Juxon had been well treated by the parliament, in consequence of his prudent abstinence from politics, and residence in their quarters. He dates his answer to the king from his palace at Fulham. He was, however, dispossessed of it not long after by virtue of the ordinance directing the sale of bishop's lands. Nov. 16. 1646. Parl. Hist. 528. A committee was appointed Nov. 2. 1646, to consider of a fitting maintenance to be allowed the bishops, both those who had remained under the parliament, and those who had deserted it. Journals. I was led to this passage by Mr. Godwin, Hist of Commonwealth, ii. 250. Whether any thing farther was done, I have not observed. But there is an order in the Journals, 1st May, 1647, that whereas divers of the late tenants of Dr. Juxon, late bishop of London, have refused to pay the rents or other sums of money due to him as bishop of London at or before the 1st of Nov. last, the trustees of bishop's lands are directed to receive the same, and pay them over to Dr. Juxon. Though this was only justice, it shows that justice was done, at least in this instance, to a bishop. Juxon must have been a very prudent and judicious man, though not learned; which probably was all the better.

[2] Jan. 29. 1646. Parl. Hist. 436. Whitelock says, "Many sober men and lovers of peace were earnest to have complied with what the king proposed; but the major part of the house was contrary, and the new-elected members joined those who were averse to compliance." P. 207.

[3] Clar. Papers, 294. 297. 300. She had said as much before (King's Cabinet Opened, p. 28.); so that this was not a burst of passion. "Conservez vous la militia," she says in one place, p. 271. "et n'abandonnez jamais; et *par cela tout reviendra*." Charles, however, disclaimed all idea of violating his faith in case of a treaty, p. 273.; but observed as to the militia, with some truth, that "the retaining of it is not of so much consequence—I am far from saying, none—as is thought, without the concurrence of other things; because the militia here is not, as in France and other countries, a formed powerful strength; but it serves more to hold off ill than to do much good. And certainly, if the pulpits teach not obedience, which will never be if presbyterian government be absolutely settled, the crown will have little comfort of the militia." P. 296.

[4] P. 245. 247. 278. 314. In one place he says, that he will go to France *to clear his reputation to the queen*, p. 265. He wrote in great distress of mind to Jermyn and Colepepper, on her threatening to retire from all business into a monastery, in consequence of his refusal to comply with her wishes, p. 270. See also Montreuil's memoir in Thurloe's State Papers, i. 85., whence it appears that the king had thoughts of making his escape in Jan. 1647.

[5] "For the proposition to Bellievre (a French agent at Newcastle after Montreuil's recall) I hate it. If any such thing should be made public, you are undone; your enemies will make a malicious use of it. Be sure you never own it again in any discourse, otherwise than as intended as a foil, or an hyberbole, or any other ways except in sober earnest," &c. p. 304.

life of exile and privacy, which religion and letters would have rendered tolerable to the king, must have been spent in hardly less bitterness, than on a dishonoured throne. She had displayed in France as little virtue as at home; the small resources which should have been frugally dispensed to those who had lost all for the royal cause, were squandered upon her favourite and her French servants. (P. 344.) So totally had she abandoned all regard to English interests, that Hyde and Capel, when retired to Jersey, the governor of which, sir Edward Carteret, still held out for the king, discovered a plan formed by the queen and Jermyn to put that island into the hands of France. (P. 279.) They were exceedingly perplexed at this discovery, conscious of the impossibility of defending Jersey, and yet determined not to let it be torn away from the sovereignty of the British crown. No better expedient occurred than, as soon as the project should be ripe for execution, to despatch a message "to the earl of Northumberland or some other person of honour," asking for aid to preserve the island. This was of course, in other words, to surrender it into the power of the parliament, which they would not name even to themselves. But it was evidently more consistent with their loyalty to the king and his family, than to trust the good faith of Mazarin. The scheme, however, was abandoned; for we hear no more of it.

It must, however, be admitted at the present day, that there was no better expedient for saving the king's life, and some portion of the royal authority for his descendants (a frank renunciation of episcopacy perhaps only excepted), than such an abdication; the time for which had come before he put himself into the hands of the Scots. His own party had been weakened, and the number of his well-wishers diminished, by something more than the events of war. The last unfortunate year had, in two memorable instances, revealed fresh proofs of that culpable imprudence, speaking mildly, which made wise and honest men hopeless of any permanent accommodation. At the battle of Naseby, copies of some letters to the queen, chiefly written about the time of the treaty of Uxbridge, and strangely preserved, fell into the hands of the enemy, and were instantly published.[1] No other losses of that fatal day were more injurious to his cause. Besides

The queen and her counsellors, however, seem afterwards to have retracted in some measure what they had said about his escape; and advised that if he could not be suffered to go into Scotland, he would try Ireland or Jersey. p. 312.

Her dislike to the king's escape showed itself, according to Clarendon, vi. 192., even at a time when it appeared the only means to secure his life, during his confinement in the Isle of Wight. Some may suspect, that Henrietta had consoled herself too well with lord Jermyn to wish for her husband's return.

[1] Clarendon and Hume inveigh against the parliament for this publication; in which they are of course followed by the whole rabble of Charles's admirers. But it could not reasonably be expected that such material papers should be kept back; nor were the parliament under any obligation to do so. The former writer insinuates that they were garbled; but Charles himself never pretended this (see Supplement to Evelyn's Diary, p. 101.); nor does there seem any foundation for the surmise. His own friends garbled them, however, after the restoration; some passages are omitted in the edition of King Charles's Works; so that they can be only read accurately in the original publication, called The King's Cabinet Opened, a small tract in quarto; or in the modern compilations, such as the Parl. Hist. which have copied it. Ludlow, he says, charges the garbling on the other party: he has been informed, that some of the letters taken at Naseby were suppressed by those intrusted with them, who since the king's restoration have been regarded for it. Memoirs, i. 156. But I should not be inclined to believe this.

There is, however, an anecdote which may be mentioned in this place:—A Dr. Hickman,

many proofs of a contemptible subserviency to one justly deemed irreconcilable to the civil and religious interests of the kingdom, and many expressions indicating schemes and hopes inconsistent with any practicable peace, and especially a design to put an end to the parliament,[1] he gave her power to treat with the English catholics, promising to take away all penal laws against them as soon as God should enable him to do so, in consideration of such powerful assistance, as might deserve so great a favour, and enable him to effect it.[2] Yet it was certain that no parliament, except in absolute duress, would consent to repeal these laws. To what sort of victory therefore did he look? It was remembered that on taking the sacrament at Oxford some time before, he had solemnly protested that he would maintain the protestant

afterwards bishop of Derry, wrote in 1690 the following letter to Sprat, bishop of Rochester, a copy of which, in Dr. Birch's hand-writing, may be found in the British Museum. It was printed by him in the Appendix to the "Inquiry into the Share K. Charles I. had in Glamorgan's Transactions," and from thence by Harris, in his life of Charles I. p. 144.

"My Lord,

"Last week Mr. Bennet [a bookseller] left with me a manuscript of letters from king Charles I. to his queen; and said it was your lordship's desire and Dr. Pelling's, that my lord Rochester should read them over, and see what was fit to be left out in the intended edition of them. Accordingly, my lord has read them over, and upon the whole matter says he is very much amazed at the design of printing them, and thinks that the king's enemies could not have done him a greater discourtesy. He showed me many passages which detract very much from the reputation of the king's prudence, and something from his integrity; and in short he can find nothing throughout the whole collection, but what will lessen the character of the king, and offend all those who wish well to his memory. He thinks it very unfit to expose any man's conversation and familiarity with his wife, but especially that king's; for it was apparently his blind side, and his enemies gained great advantage by showing it. But my lord hopes his friends will spare him; and therefore he has ordered me not to deliver the book to the bookseller, but put it into your lordship's hands; and when you have read it, he knows you will be of his opinion. If your lordship has not time to read it all, my lord has turned down some leaves where he makes his chief objections. If your lordship sends any servant to town, I beg you will order him to call here for the book, and that you would take care about it."

Though the description of these letters answers perfectly to those in the King's Cabinet Opened, which certainly "detract much from the reputation of Charles's prudence, and something from his integrity," it is impossible that Rochester and the others could be ignorant of so well-known a publication; and we must consequently infer that some letters injurious to the king's character have been suppressed by the caution of his friends.

[1] The king had long entertained a notion, in which he was encouraged by the attorney-general Herbert, that the act against the dissolution of the parliament without its own consent was void in itself. Life of Clarendon, p. 86. This high monarchical theory of the nullity of statutes in restraint of the prerogative was never thoroughly eradicated till the Revolution, and in all contentions between the crown and parliament destroyed the confidence, without which no accommodation could be durable.

[2] "There is little or no appearance but that this summer will be the hotest for war of any that hath been yet; and be confident that in making peace, I shall ever show my constancy in adhering to bishops and all our friends, not forgetting to put a short period to this perpetual parliament." King's Cabinet Opened, p. 7. "It being presumption, and no piety, so to trust to a good cause as not to use all lawful means to maintain it, I have thought of one means more to furnish thee with for my assistance, than hitherto thou hast had: it is, that I give thee power to promise in my name, to whom thou thinkest most fit, that I will take away all the penal laws against the Roman catholics in England as soon as God shall enable me to do it; so as by their means, or in their favours, I may have so powerful assistance as may deserve so great a favour, and enable me to do it. But if thou ask what I call that assistance, I answer, that when thou knowest what may be done for it, it will be easily seen, if it deserve to be so esteemed. I need not tell thee what secrecy this business requires; yet this I will say, that this is the greatest point of confidence I can express to thee; for it is no thanks to me to trust thee in any thing else but in this, which is the only point of difference in opinion betwixt us: and yet I know thou wilt make as good a bargain for me, even in this, as if thou wert a protestant." Id. ibid. "As to my calling those at London a parliament, I shall refer thee to Digby for particular satisfaction; this in general—if there had been but two, besides myself, of my opinion, I had not done it; and the argument that prevailed with me was, that the calling did no ways acknowledge them to be a parliament, upon which condition and construction I did it, and no otherwise, and accordingly it is registered in the council books, with the council's unanimous approbation." Id. p. 4. The one counsellor who concurred with the king was secretary Nicholas. Supplement to Evelyn's Memoirs, p. 90.

religion of the church of England, without any connivance at popery. What trust could be reposed in a prince capable of forfeiting so solemn a pledge? Were it even supposed that he intended to break his word with the catholics, after obtaining such aid as they could render him, would his insincerity be less flagrant?[1]

These suspicions were much aggravated by a second discovery that took place soon afterwards, of a secret treaty between the earl of Glamorgan and the confederate Irish catholics, not merely promising the repeal of the penal laws, but the establishment of their religion in far the greater part of Ireland.[2] The marquis of Ormond, as well as lord Digby, who happened to be at Dublin, loudly exclaimed against Glamorgan's presumption in concluding such a treaty, and committed him to prison on a charge of treason. He produced two commissions from the king, secretly granted without any seal or the knowledge of any minister, containing the fullest powers to treat with the Irish, and promising to fulfil any conditions into which he should enter. The king, informed of this, disavowed Glamorgan; and asserted in a letter to the parliament that he had merely a commission to raise men for his service, but no power to treat of any thing else, without the privity of the lord lieutenant, much less to capitulate any thing concerning religion or any property belonging either to church or laity.[3] Glamorgan, however, was soon released, and lost no portion of the king's or his family's favour.

This transaction has been the subject of much historical controversy. The enemies of Charles, both in his own and later ages, have con-

[1] The queen evidently suspected that he might be brought to abandon the catholics. King's Cabinet Opened, p. 30. 31. And, if fear of her did not prevent him, I make no question that he would have done so, could he but have carried his other points.

[2] Parl. Hist. 428.; Somers Tracts, v. 542. It appears by several letters of the king, published among those taken at Naseby, that Ormond had power to promise the Irish a repeal of the penal laws, and the use of private chapels, as well as a suspension of Poyning's law. King's Cabinet Opened, p. 16. 19.; Rushw. v. 589. Glamorgan's treaty granted them all the churches with the revenues thereof, of which they had at any time since October, 1641, been in possession; that is, the re-establishment of their religion: they, on the other hand, were to furnish a very large army to the king in England.

[3] Rushw. v. 582. 594. This, as well as some letters taken on lord Digby's rout at Sherborne about the same time, made a prodigious impression. "Many good men were sorry that the king's actions agreed no better with his words; that he openly protested before God with horrid imprecations that he endeavoured nothing so much as the preservation of the protestant religion, and rooting out of popery; yet in the mean time, underhand, he promised to the Irish rebels an abrogation of the laws against them, which was contrary to his late expressed promises in these words, 'I will never abrogate the laws against the papists.' And again he said, 'I abhor to think of bringing foreign soldiers into the kingdom,' and yet he solicited the duke of Lorrain, the French, the Danes, and the very Irish, for assistance." May's Breviate of Hist. of Parliament in Maseres' Tracts, i. 61. Charles had certainly never scrupled (I do not say that he ought to have done so) to make application in every quarter for assistance; and began in 1642 with sending a col. Cochran on a secret mission to Denmark, in the hope of obtaining a subsidiary force from that kingdom. There was at least no danger to the national independence from such allies. "We fear this shall undo the king for ever, that no repentance shall ever obtain a pardon of this act, if it be true, from his parliaments." Baillie, ii. 185. Jan. 20. 1646. The king's disavowal had some effect; it seems as if even those who were prejudiced against him could hardly believe him guilty of such an apostasy, as it appeared in their eyes. P. 175. And, in fact, though the catholics had demanded nothing unreasonable either in its own nature or according to the circumstances wherein they stood, it threw a great suspicion on the king's attachment to his own faith, when he was seen to abandon altogether, as it seemed, the protestant cause in Ireland, while he was struggling so tenaciously for a particular form of it in Britain. Nor was his negotiation less impolitic than dishonourable. Without depreciating a very brave and injured people, it may be said with certainty that an Irish army could not have had the remotest chance of success against Fairfax and Cromwell: the courage being equal on our side, the skill and discipline incomparably superior. And it was evident that Charles could never reign in England but on a protestant interest.

sidered it as a proof of his indifference at least to the protestant religion, and of his readiness to accept the assistance of Irish rebels on any conditions. His advocates for a long time denied the authenticity of Glamorgan's commissions. But Dr. Birch demonstrated that they were genuine; and if his dissertation could have left any doubt, later evidence might be adduced in confirmation.[1] Hume, in a very artful and very unfair statement, admitting the authenticity of these instruments, endeavours to show that they were never intended to give Glamorgan any power to treat without Ormond's approbation. But they are worded in the most unconditional manner, without any reference to Ormond. No common reader can think them consistent with the king's story. I do not, however, impute to him any intention of ratifying the terms of Glamorgan's treaty. His want of faith was not to the protestant, but to the catholic. Upon weighing the whole of the evidence, it appears to me that he purposely gave Glamorgan, a sanguine and injudicious man, whom he could easily disown, so ample a commission as might remove the distrust that the Irish were likely to entertain of a negotiation wherein Ormond should be concerned; while by a certain latitude in the style of the instrument, and by his own letters to the lord lieutenant about Glamorgan's errand, he left it open to assert, in case of necessity, that it was never intended to exclude the former's privity and sanction. Charles had unhappily long been in the habit of perverting his natural acuteness to the mean subterfuges of equivocal language.

By these dis- veries of the king's insincerity, and by what seemed his infatu .ed obstinacy in refusing terms of accommodation, both

[1] Birch's Inquiry into the Share which King Charles I. had in the Transactions of the earl of Glamorgan, 1747. Four letters of Charles to Glamorgan, now in the British Museum (Sloane MSS. 4161.), in Birch's hand-writing, but of which he was not aware at the time of that publication, decisively show the king's duplicity. In the first, which was meant to be seen by Digby, dated Feb. 3. 1646, he blames him for having been drawn to consent to conditions much beyond his instructions. "If you had advised with my lord lieutenant as you promised me, all this had been helped;" and tells him he had commanded as much favour to be shown him as might possibly stand with his service and safety. On Feb. 28. he writes by a private hand, sir John Winter, that he is every day more and more confirmed in the trust that he had of him. In a third letter, dated April 5., he says, in a cipher, to which the key is given, "you cannot be but confident of my making good all instructions and promises to you and nuncio." The fourth letter is dated April 6., and is in these words:—"Herbert, as I doubt not but you have too much courage to be dismayed or discouraged at the usage like you have had, so I assure you that my estimation of you is nothing diminished by it, but rather begets in me a desire of revenge and reparation to us both (for in this I hold myself equally interested with you), whereupon not doubting of your accustomed care and industry in my service, I assure you of the continuance of my favour and protection to you, and that in deeds more than in words I shall show myself to be your most assured constant friend. C. R."

These letters have lately been republished by Dr. Lingard, Hist. of Eng. x. note B, from Warner's Hist. of the Civil War in Ireland. The cipher may be found in the Biographia Britannica, under the article Bales. Dr. L. endeavours to prove that Glamorgan acted all along with Ormond's privity; and it must be owned that the expression in the king's last letter about revenge and reparation, which Dr. L. does not advert to, has a very odd appearance.

The controversy is, I suppose, completely at an end; so that it is hardly necessary to mention a letter from Glamorgan, then marquis of Worcester, to Clarendon, after the restoration, which has every internal mark of credibility, and displays the king's unfairness. Clar. State Pap. ii. 201., and Lingard, ubi supra. It is remarkable that the transaction is never mentioned in the History of the Rebellion. The noble author was, however, convinced of the genuineness of Glamorgan's commission, as appears by a letter to secretary Nicholas. "I must tell you, I care not how little I say in that business of Ireland, since those strange powers and instructions given to your favourite Glamorgan, which appear to be so inexcusable to justice, piety, and prudence. And I fear there is very much in that transaction of Ireland, both before and since, that you and I were never thought wise enough to be advised with in. Oh! Mr

nations became more and more alienated from him; the one hardly restrained from casting him off; the other ready to leave him to his fate.[1] This ill opinion of the king forms one apology for that action, which has exposed the Scots nation to so much reproach—their delivery of his person to the English parliament. Perhaps if we place ourselves in their situation, it will not appear deserving of quite such indignant censure. It would have shown more generosity to have offered the king an alternative of retiring to Holland; and from what we now know, he probably would not have neglected the opportunity. But the consequence might have been his solemn deposition from the English throne; and, however we may think such banishment more honourable than the acceptance of degrading conditions, the Scots, we should remember, saw nothing in the king's taking the covenant, and sweeping away prelatic superstitions, but the bounden duty of a Christian sovereign, which only the most perverse self-will induced him to set at nought.[2] They had a right also to consider the interests of his family, which the threatened establishment of a republic in England would defeat. To carry him back with their army into Scotland, besides being equally ruinous to the English monarchy, would have exposed their nation to the most serious dangers. To undertake his defence by arms against England, as the ardent royalists desired, and doubtless the determined republicans no less, would have been, as was proved afterwards, a mad and culpable renewal of the miseries of both kingdoms.[3] He had voluntarily come to their camp; no faith was pledged to him; their very right to retain his person, though they

Secretary, those stratagems have given me more sad hours than all the misfortunes in war which have befallen the king, and look like the effects of God's anger towards us." Id. p. 237. See also a note of Mr. Laing, Hist of Scotland, iii. 557., for another letter of the king to Glamorgan, from Newcastle, in July, 1646, not less explicit than the foregoing.

[1] Burnet's Mem. of Dukes of Hamilton, 284. Baillie's letters, throughout 1646, indicate his apprehension of the prevalent spirit, which he dreaded as implacable, not only to monarchy, but to presbytery and the Scots nation. "The leaders of the people seem inclined to have no shadow of a king, to have liberty for all religions, a lame Erastian presbytery, to be so injurious to us as to chase us hence with the sword." 148. Mar. 31. 1646. "The common word is, that they will have the king prisoner. Possibly they may grant to the prince to be a duke of Venice. The militia must be absolutely, for all time to come, in the power of the parliament alone." &c. 200. On the king's refusal of the propositions sent to Newcastle, the Scots took great pains to prevent a vote against him, 226. There was still, however, danger of this. 236. Oct. 13. and p. 243. His intrigues with both parties, the presbyterians and independents, were now known; and all sides seem to have been ripe for deposing him, 245. These letters are a curious contrast to the idle fancies of a speedy and triumphant restoration, which Clarendon himself as well as others of less judgment seem to have entertained.

[2] "Though he should swear it," says Baillie, "no man will believe that he sticks upon episcopacy for any conscience," ii. 205. And again: "It is pity that base hypocrisy, when it is pellucid, shall still be entertained. No oaths did ever persuade me, that episcopacy was ever adhered to on any conscience," 224. This looks at first like mere bigotry. But when we remember that Charles had abolished episcopacy in Scotland, and was ready to abolish protestantism in Ireland, Baillie's prejudices will appear less unreasonable. The king's private letters, in the Clarendon Papers have convinced me of his mistaken conscientiousness about church government; but of this his contemporaries could not be aware.

[3] Hollis maintains that the violent party were very desirous that the Scots should carry the king with them, and that nothing could have been more injurious to his interests. If we may believe Berkley, who is much confirmed by Baillie, the presbyterians had secretly engaged to the Scots that the army should be disbanded, and the king brought up to London with honour and safety. Memoirs of sir J. Berkley, in Maseres's Tracts, i. 358. Baillie, ii. 257. This affords no bad justification of the Scots for delivering him up.

"It is very like," says Baillie, "if he had done any duty, though he had never taken the covenant, but permitted it to have been put in an act of parliament in both kingdoms, and given so satisfactory an answer to the rest of the propositions, as easily he might, and sometimes I know he was willing, certainly Scotland had been for him as one man: and the body

had argued for it with the English parliament, seemed open to much doubt. The circumstance, unquestionably, which has always given a character of apparent baseness to this transaction, is the payment of 400,000*l.* made to them so nearly at the same time that it has passed for the price of the king's person. This sum was part of a larger demand on the score of arrears of pay, and had been agreed upon long before we have any proof or reasonable suspicion of a stipulation to deliver up the king.[1] That the parliament would never have actually paid it on any other consideration, there can be, I presume, no kind of doubt; and of this the Scots must have been fully aware. But whether there were any such secret bargain as had been supposed, or whether they would have delivered him up, if there had been no pecuniary expectation in the case, is what I cannot perceive sufficient grounds to pronounce with confidence; though I am much inclined to believe the affirmative of the latter question. And it is deserving of particular observation, that the party in the house of commons which sought most earnestly to obtain possession of the king's person, and carried all the votes for payment of money to the Scots, was that which had no further aim than an accommodation with him, and a settlement of the government on the basis of its fundamental laws, though doubtless on terms very derogatory to his prerogative; while those who opposed each part of the negotiation were the zealous enemies of the king, and, in some instances, at least, of the monarchy. The Journals bear witness to this.[2]

Whatever might have been the consequence of the king's accepting the propositions of Newcastle, his chance of restoration upon any terms was now in all appearance very slender. He had to encounter enemies more dangerous and implacable than the presbyterians. That faction, which from small and insensible beginnings had acquired continued strength, through ambition in a few, through fanaticism in many, through a despair in some of reconciling the pretensions of royalty with those of the people, was now rapidly ascending to superiority. Though still weak in the house of commons, it had spread prodigiously in the army, especially since its new-modelling at the time of the self-denying ordinance.[3] The presbyterians saw with

of England, upon many grounds, was upon a disposition to have so cordially embraced him, that no man, for his life, durst have muttered against his present restitution. But remaining what he was in all his maxims, a full Canterburian, both in matters of religion and state, he still inclined to a new war; and for that end resolved to go to Scotland. Some great men there pressed the equity of Scotland's protecting of him on any terms. This untimeous excess of friendship has ruined that unhappy prince; for the better party finding the conclusion of the king's coming to Scotland, and thereby their own present ruin, and the ruin of the whole cause, the making the malignants masters of church and state, the drawing the whole force of England upon Scotland for their perjurious violation of their covenant, they resolved by all means to cross that design." P. 253.

[1] The votes for payment of the sum of 400,000*l.* to the Scots are on Aug. 21. 27. and Sept. 1.; though it was not fully agreed between the two nations till Dec. 8. Whitelock, 220. 229. But Whitelock dates the commencement of the understanding as to the delivery of the king about Dec. 24., p. 231. See Commons' Journals. Baillie. ii. 246. 253. Burnet's Mems. of Hamilton, 293, &c. Laing, iii. 362.; and Godwin's Hist. of the Commonwealth, ii. 258.: a work in which great attention has been paid to the order of time.

[2] Journals, Aug. and Sept. Godwin, ubi supra. Baillie. ii. passim.

[3] Baillie, who, in Jan. 1644, speaks of the independents as rather troublesome than formidable, and even says: "No man, I know, in either of the houses of any note is for them," 437.; and that "lord Saye's power and reputation is none at all:" admits, in a few months, the alarming increase of independency and sectarianism in the earl of Manchester's army; more

dismay the growth of their own and the constitution's enemies. But the royalists, who had less to fear from confusion than from any settlement that the commons would be brought to make, rejoiced in the increasing disunion; and fondly believed, like their master, that one or other party must seek assistance at their hands.[1]

The independent party comprehended, besides the members of that religious denomination,[2] a countless brood of fanatical sectaries, nursed in the lap of presbyterianism, and fed with the stimulating aliments he furnished, till their intoxicated fancies could neither be restrained within the limits of her creed nor those of her discipline.[3] The presbyterian zealots were systematically intolerant. A common cause made toleration the doctrine of the sectaries. About the beginning of the war, it had been deemed expedient to call together an assembly of divines, nominated by the parliament, and consisting not only of clergymen, but, according to the presbyterian usage, of lay members, peers as well as commoners, by whose advice a general reformation of the church was to be planned.[4] These were chiefly presbyterian; though a small minority of independents, and a few moderate episcopalians, headed by Selden,[5] gave them much trouble. The general imposition of the covenant, and the substitution of the directory for the common prayer

than two parts in three of the officers and soldiers being with them, and those the most resolute and confident; though they had no considerable force either in Essex's or Waller's army, nor in the assemby of divines or the parliament, ii. 5. 19. 20. This was owing in a great degree, to the influence, at that period, of Cromwell over Manchester. "The man," he says, "is a very wise and active head, universally well beloved, as religious and stout; being a known independent, and most of the soldiers who love new ways put themselves under his command," 60.

[1] The independent party, or at least some of its most eminent members, as lord Saye and Mr. St. John, were in a secret correspondence with Oxford, through the medium of lord Saville, in the spring of 1645, if we believe Hollis, who asserts that he had seen their letters, asking offices for themselves. Mem. of Hollis, sect. 43. Baillie refers this to an earlier period, the beginning of 1644, i. 427.; and I conceive that Hollis has been incorrect as to the date. The king, however, was certainly playing a game with them in the beginning of 1646, as well as with the presbyterians. so as to give both parties an opinion of his insincerity. Clarendon State Papers, 214.; and see two remarkable letters written by his order to sir Henry Vane, 226., urging an union, in order to overthrow the presbyterian government.

[2] The principles of the independents are set forth candidly, and even favourably by Collier, 829.; as well as by Neal, ii. 98. For those who are not much acquainted with ecclesiastical distinctions, it may be useful to mention the two essential characteristics of this sect by which they differed from the presbyterians. The first was, that all churches or separate congregations were absolutely independent of each other as to jurisdiction or discipline; whence they rejected all synods and representative assemblies as possessing authority; though they generally admitted, to a very limited degree, the alliance of churches for mutual counsel and support. Their second characteristic was the denial of spiritual powers communicated in ordination by apostolical succession; deeming the call of a congregation a sufficient warrant for the exercise of the ministry. See Orme's Life of Owen for a clear view and able defence of the principles maintained by this party. I must add, that Neal seems to have proved that the independents as a body, were not systematically adverse to monarchy.

[3] Edward's Gangræna, a noted book in that age, enumerates one hundred and seventy-six heresies, which however are reduced by him to sixteen heads; and these seem capable of further consideration. Neal, 249. The house ordered a general fast, Feb. 1647, to beseech God to stop the growth of heresy and blasphemy. Whitelock, 236.; a presbyterian artifice to alarm the nation.

[4] Parl. Hist. ii. 1479. They did not meet till July 1. 1643. Rushw. v. 123. Neal, 42. Collier, 823. Though this assembly showed abundance of bigotry and narrowness, they were by no means so contemptible as Clarendon represents them, ii. 423.; and perhaps equal in learning, good sense, and other merits, to any lower house of convocation that ever made a figure in England.

[5] Whitelock, 71. Neal, 103. Selden, who owed no gratitude to the episcopal church, was from the beginning of its dangers a steady and active friend, displaying whatever may have been said of his timidity, full as much courage as could reasonably be expected from a studious man advanced in years. Baillie, in 1641, calls him "the avowed proctor of the bishops," i.

(which was forbidden to be used even in any private family, by an ordinance of August, 1645,) seemed to assure the triumph of presbyterianism; which became complete, in point of law, by an ordinance of February, 1646, establishing for three years the Scots model of classes, synods, and general assemblies throughout England.[1] But in this very ordinance there was a reservation which wounded the spiritual arrogance of that party. Their favourite tenet had always been the independency of the church. They had rejected, with as much abhorrence as the catholics themselves, the royal supremacy, so far as it controlled the exercise of spiritual discipline. But the house of commons were inclined to part with no portion of that prerogative which they had wrested from the crown. Besides the independents, who were still weak, a party called Erastians,[2] and chiefly composed of the common lawyers, under the guidance of Selden, the sworn foe of every ecclesiastical usurpation, withstood the assembly's pretensions with success. They negatived a declaration of the divine right of presbyterian government. They voted a petition from the assembly, complaining of a recent ordinance as an encroachment on spiritual jurisdiction, to be a breach of privilege. The presbyterian tribunals were made subject to the appellant control of parliament; as those of the Anglican church had been to that of the crown. The cases wherein spiritual censures could be pronounced, or the sacrament denied, instead of being left to the clergy, were defined by law,[3] Whether

245.; and when provoked by his Erastian opposition, in 1646, presumes to talk of his "insolent absurdity," ii. 96. Selden sat in the assembly of divines; and by his great knowledge of the ancient languages and of ecclesiastical antiquities, as well as by his sound logic and calm clear judgment, obtained an undeniable superiority, which he took no pains to conceal.

[1] Scobell. Rushw., v. 576. Parl Hist. iii. 444. Neal, 199. The latter says, this did not pass the lords till June 6. But this is not so. Whitelock very rightly opposed the prohibition of the use of the common prayer, and of the silencing episcopal ministers, as contrary to the principle of liberty of conscience avowed by the parliament, and like what had been complained of in the bishops, 226. 239. 281. But, in Sept. 1647, it was voted that the indulgence in favour of tender consciences should not extend to tolerate the common prayer. Id. 274.

[2] The Erastians were named from Erastus, a German physician in the sixteenth century. The denomination is often used in the present age ignorantly, and therefore indefinitely; but I apprehend that the fundamental principle of his followers was this:—That in a commonwealth where the magistrate professes Christianity, it is not convenient that offences against religion and morality should be punished by the censures of the church, especially by excommunication. Probably he may have gone farther, as Selden seems to have done (Neal, 194.), and denied the right of exclusion from church communion, even without reference to the temporal power; but the limited proposition was of course sufficient to raise the practical controversy. The Helvetic divines, Gualtor and Bullinger, strongly concurred in this with Erastus: "Contendimus disciplinam esse debere in ecclesiâ, sed satis esse, si ea, administretur a magistratu." Erastus, 350. and 379. And it is said, that archbishop Whitgift caused Erastus's book to be printed at his own expense See one of Warburton's notes on Neal. Calvin and the whole of his school, held, as is well known, a very opposite tenet. See Erasti Thesis de Excommunicatione, 4to. 1579.

The ecclesiastical constitution of England is nearly Erastian in theory, and almost wholly so in practice. Every sentence of the spiritual judge is liable to be reversed by a civil tribunal, the court of delegates, by virtue of the king's supremacy over all causes. And, practically, what is called church discipline, or the censures of ecclesiastical governors for offences, has gone so much into disuse, and what remains is so contemptible, that I believe no one, except those who derive a little profit from it, would regret its abolition.

"The most part of the house of commons," says Baillie, ii. 149., "especially the lawyers, whereof there are many, and divers of them very able men, are either half or whole Erastians, believing no church government to be of divine right, but all to be a human constitution depending on the will of the magistrate." "The pope and king," he says in another place, 196., "were never more earnest for the headship of the church than the plurality of this parliament." See also p. 183.; and Whitelocke, 169.

[3] Parl. Hist. 459. et alibi. Rushw. v. 578. et. alibi. Whitelock, 165. 169. 173. 176. et post. Baillie's Letters, passim. Neal, 23. &c. 194. et post. Collier, 841. The assembly attempted

from dissatisfaction on this account, or some other reason, the presbyterian discipline was never carried into effect, except to a certain extent in London and in Lancashire. But the beneficed clergy throughout England, till the return of Charles II., were chiefly, though not entirely of that denomination.[1]

This party was still so far predominant, having the strong support of the city of London and its corporation,[2] with almost all the peers who remained in their house, that the independents and other sectaries neither opposed this ordinance for its temporary establishment, nor sought any thing further than a toleration for their own worship. The question, as Neal well observes, was not between presbytery and independency, but between presbytery with a toleration, and without one.[3] Not merely for their own exclusive bigotry, but from a political

to sustain their own cause by counter votes; and, the minority of independents and Erastians having withdrawn, it was carried with the single dissent of Lightfoot, that Christ had established a government in his church independent of the civil magistrate. Neal, 223.

[1] Neal, 228. Warburton says, in his note on this passage, that "the presbyterian was *to all intents and purposes* the established religion during the time of the commonwealth." But, as coercive discipline and synodical government are no small intents and purposes of that religion, this assertion requires to be modified, as it has been in my text. Besides which, there were many ministers of the independent sect in benefices, some of whom probably had never received ordination. "Both baptists and independents," says a very well informed writer of the latter denomination, "were in the practice of accepting the livings, that is, the temporalities of the church. They did not, however, view themselves as parish ministers, and bound to administer all the ordinances of religion to the parish population. They occupied the parochial edifices, and received a portion of the tithes for their maintenance; but in all other respects acted according to their own principles." Orme's Life of Owen, 136. This he thinks would have produced very serious evils, if not happily checked by the Restoration. "During the commonwealth," he observes afterwards, 245. "no system of church government can be considered as having been properly or fully established. The presbyterians, if any, enjoyed this distinction."

[2] The city began to petition for the establishment of presbytery, and against toleration of sectaries early in 1646; and not long after came to assume what seemed to the commons too dictatorial a tone. This gave much offence, and contributed to drive some members into the opposite faction. Neal, 193. 221. 241. Whitelock, 207. 240.

[3] Vol. ii. 268. See also 207. and other places. This is a remark that requires attention; many are apt to misunderstand the question, "For this point (toleration) both they and we contend," says Baillie, "tanquam pro aris et focis," ii. 175. "Not only they praise your magistrate," (writing to a Mr. Spang in Holland,) "who for policy gives some secret tolerance to divers religions, wherein, as I conceive, your divines preach against them as great sinners, but avow that by God's command the magistrate is discharged to put the least discourtesy on any man, Jew, Turk, papist, socinian, or whatever, for his religion," 18. See also 61., and many other passages. "The army" (say Hugh Peters in a tract, entitled A Word for the Army, and Two Words to the People, 1647) "never hindered the state from a state religion, having only wished to enjoy now what the puritans begged under the prelates; when we desire more, blame us, and shame us." In another, entitled Vox Militaris, the author says: "We did never engage against this plat-form, nor for that plat-form, nor ever will, except better informed; and therefore, if the state establisheth presbytery, we shall never oppose it."

The question of toleration, in its most important shape, was brought at this time before parliament, on occasion of one Paul Best who had written against the doctrine of the trinity. According to the common law, heretics, on being adjudged by the spiritual court, were delivered over to be burned under the writ de hæretico comburendo. This punishment had been inflicted five times under Elizabeth; on Wielmacker and Ter Wort, two Dutch anabaptists, who, like many of that sect, entertained Arian tenets, and were burned in Smithfield in 1575; on Matthew Hammond 1579, Thomas Lewis in 1583, and Francis Ket in 1588; all burned by Scambler, bishop of Norwich. It was also inflicted on Bartholomew Legat and Edward Wightman, under James, in 1614; the first burned by King, bishop of London, the second by Neile of Lichfield. A third, by birth a Spaniard, incurred the same penalty: but the compassion of the people showed itself so strongly at Legat's execution, that James thought it expedient not to carry the sentence into effect. Such is the venomous and demoralizing spirit of bigotry, that Fuller, a writer remarkable for good nature and gentleness, expresses his indignation at the pity which was manifested by the spectators of Legat's sufferings. Church Hist. part. ii. p. 92. In the present case of Paul Best, the old sentence of fire was not suggested by any one; but an ordinance was brought in, Jan. 1646, to punish him with death, Whitelock, 190. Best made, at length, such an explanation as was accepted, Neal, 214.;

alarm by no means ungrounded, the presbyterians stood firmly against all liberty of conscience. But in this again they could not influence the house of commons to suppress the sectaries, though no open declaration in favour of indulgence was as yet made. It is still the boast of the independents, that they first brought forward the great principles of religious toleration (I mean as distinguished from maxims of political expediency) which had been confined to a few philosophical minds; to sir Thomas More, in those days of his better judgment, when he planned his republic of Utopia, to Thuanus, or L'Hospital. Such principles are indeed naturally congenial to the persecuted; and it is by the alternate oppression of so many different sects, that they have now obtained their universal reception. But the independents also assert that they first maintained them while in power; a far higher praise, which can, however, only be allowed them by comparison. Without invidiously glancing at their early conduct in New England,[1] it must be admitted that the continuance of the penal laws against Catholics, the prohibition of the episcopalian worship, and the punishment of one or two anti-trinitarians under Cromwell, are proofs that the tolerant principle had not yet acquired perfect vigour. If the independent sectaries were its earliest advocates, it was the Anglican writers, the school of Chillingworth, Hales, Taylor, Locke, and Hoadley, that rendered it victorious.[2]

The king, as I have said, and his party cherished too sanguine hopes from the disunion of their opponents.[3] Though warned of it by the parliamentary commissioners at Uxbridge, though in fact it was quite notorious and undisguised, they seem never to have comprehended

but an ordinance to suppress blasphemies and heresies as capital offences was brought in Commons' Journals, April, 1646. The independents gaining strength, this was long delayed; but the ordinance passed both houses, May 2. 1648. Id. 303. Neal, 338. justly observes, that it shows the governing presbyterians would have made a terrible use of their power had they been supported by the sword of the civil magistrate. The denial of the trinity, incarnation, atonement, or inspiration of any book of the Old or New Testament, was made felony. Lesser offences, such as anabaptism, or denying the lawfulness of presbyterian government, were punishable by imprisonment till the party should recant. It was much opposed, especially by Whitelock. The writ de hæretico comburendo, as is well known, was taken away by act of parliament in 1677.

[1] "In all New England, no liberty of living for a presbyterian. Whoever there, were they angels for life and doctrine, will essay to set up a different way from them [the independents] shall be sure of present banishment." Baillie, ii. 4. also 17. I am surprised to find a late writer of that country (Dwight's Travels in New England) attempt to extenuate at least the intolerance of the independents towards the quakers who came to settle there; and which, we see, extended also to the presbyterians. But Mr. Orme, with more judgment, observes that the New England congregations did not sufficiently adhere to the principal of independency, and acted too much as a body; to which he ascribes their persecution of the quakers and others. Life of Owen, p. 335. It is certain that the congregational scheme leads to toleration, as the national church scheme is adverse to it, and for manifold reasons which the reader will discover.

[2] Though the writings of Chillingworth and Hales are not directly in behalf of toleration, no one could relish them without imbibing its spirit in the fullest measure. The great work of Jeremy Taylor, on the Liberty of Prophesying, was published in 1647; and, if we except a few concessions to the temper of the times, which are not reconcilable to its general principles, has left little for those who followed him. Mr. Orme admits that the remonstrants of Holland maintained the principles of toleration very early, p. 50.; but refers to a tract by Leonard Busher, an independent, in 1614, as "containing the most enlightened and scriptural views of religious liberty," p. 99. He quotes other writings of the same sect under Charles I.

[3] Several proofs of this occur in the Clarendon State Papers. A letter, in particular, from Colepepper to Digby, in Sept. 1645, is so extravagantly sanguine, considering the posture of the king's affairs at that time, that, if it was perfectly sincere, Colepepper must have been a man of less ability than has generally been supposed. Vol. ii. p. 188. Neal has some sensible remarks on the king's mistake in supposing that any party which he did not join must in

that many active spirits looked to the entire subversion of the monarchy. The king in particular was haunted by a prejudice, natural to his obstinate and undeserving mind, that he was necessary to the settlement of the nation; so that, if he remained firm, the whole parliament and army must be at his feet. Yet during the negotiations at Newcastle there was daily an imminent danger that the majority of parliament, irritated by his delays, would come to some vote excluding him from the throne. The Scots presbyterians, whatever we may think of their behaviour, were sincerely attached, if not by loyal affection, yet by national pride, to the blood of their ancient kings. They thought and spoke of Charles as of a headstrong child, to be restrained and chastised, but never cast off.[1] But in England he had absolutely no friends among the prevailing party; many there were who thought monarchy best for the nation, but none who cared for the king.

This schism nevertheless between the parliament and the army was at least in appearance very desirable for Charles, and seemed to afford him an opportunity which a discreet person might improve to great advantage, though it unfortunately deluded him with chimerical expectations.[2] At the conclusion of the war, which the useless obstinacy of the royalists had protracted till the beginning of 1647,[3] the commons began to take measures for breaking the force of their remaining enemy. They resolved to disband a part of the army, and to send the rest into Ireland.[4] They formed schemes for getting rid

the end be ruined, p. 268. He had not lost this strange confidence after his very life had become desperate; and told sir John Bowring, when he advised him not to spin out the time at the treaty of Newport, that "any interests would be glad to come in with him." See Bowring's Memoirs in Halifax's Miscellanies, 132.

[1] Baillie's letters are full of this feeling, and must be reckoned fair evidence, since no man could be more bigoted to presbytery, or more bitter against the royalist party. I have somewhere seen Baillie praised for his mildness. His letters give no proof of it. Take the following specimens:—"Mr. Maxwell of Ross has printed at Oxford so desperately malicious an invective against our assemblies and presbyteries, that however I could hardly consent to the hanging of Canterbury, or of any jesuit, yet I could give my sentence freely against that unhappy man's life." ii. 99. "God has struck Coleman with death: he fell in an ague, and after three or four days expired. It is not good to stand in Christ's way." P. 199.

Baillie's judgment of men was not more conspicuous than his moderation. "Vane and Cromwell are of horrible hot fancies to put all in confusion, but none of any deep reach. St. John and Pierrepoint are more stayed, but not great heads." P. 258. The drift of all his letters is, that every man who resisted the jus divinum of presbytery was knave or fool, if not both. They are, however, eminently serviceable as historical documents.

[2] "Now for my own particular resolution," he says in a letter to Digby, Mar. 26. 1646, "it is this. I am endeavouring to get to London, so that the conditions may be such as a gentleman may own, and that the rebels may acknowledge me king; being not without hope that I shall be able so to draw either the presbyterians or independents to side with me for extirpating the one or the other, that I shall really be king again." Carte's Ormond, iii. 452.; quoted by Mr. Brodie, to whom I am indebted for the passage. I have mentioned already his overture about this time to sir Henry Vane through Ashburnham.

[3] Clarendon, followed by Hume and several others, appears to say that Ragland castle in Monmouthshire, defended by the marquis of Worcester, was the last that surrendered; namely in Aug. 1646. I use the expression *appears to say*, because the last edition, which exhibits his real text, shows that he paid this compliment to Pendennis castle in Cornwall, and that his original editors (I suppose to do honour to a noble family), foisted in the name of Ragland. It it true however of neither. The North Welsh castles held out considerably longer; that of Harlech was not taken till April, 1647, which put an end to the war. Whitelock.

Clarendon, still more unyielding than his master, extols the long resistance of his party, and says that those who surrendered at the first summons obtained no better terms than they who made the stoutest defence; as if that were a sufficient justification for prolonging a civil war. In fact, however, they did the king some harm; inasmuch as they impeded the efforts made in parliament to disband the army. Several votes of the commons show this; see the journals of 12th May and 31st July, 1646.

[4] The resolution to disband Fairfax's regiment next Tues. at Chelmsford passed 16 May,

of Cromwell, and even made some demur about continuing Fairfax in command.[1] But in all measures that exact promptitude and energy, treachery and timidity are apt to enfeeble the resolutions of a popular assembly. Their demonstrations of enmity were however so alarming to the army, who knew themselves disliked by the people, and dependent for their pay on the parliament, that as early as April, 1647, an overture was secretly made to the king, that they would replace him in his power and dignity. He cautiously answered, that he would not involve the kingdom in a fresh war, but should ever feel the strongest sense of this offer from the army.[2] Whether they were discontented at the coldness of this reply, or, as is more probable, the offer had only proceeded from a minority of the officers, no further overture was made, till not long afterwards the bold manœuvre of Joyce had placed the king's person in their power.

The first effect of this military violence was to display the parliament's deficiency in political courage. It contained, we well know, a store of energetic spirits, not apt to swerve from their attachments. But where two parties are almost equally balanced, the defection, which external circumstances must produce among those timid and feeble men from whom no assembly can be free, even though they should form but a small minority, will of course give a character of cowardice and vacillation to counsels, which is imputed to the whole. They immediately expunged, by a majority of 96 to 79, a vote of reprehension passed some weeks before, upon a remonstrance from the army which the presbyterians had highly resented, and gave other proofs of retracing their steps. But the army was not inclined to accept their submission in full discharge of the provocation. It had schemes of its own for the reformation and settlement of the kingdom, more extensive than those of the presbyterian faction. It had its own wrongs also to revenge. Advancing towards London, the general and council of war sent up charges of treason against eleven principal members of that party, who obtained leave to retire beyond sea. Here may be said to have fallen the legislative power and civil government of England; which from this hour till that of the restoration had never more than a momentary and precarious gleam of existence, perpetually interrupted by the sword.

1647, by 136 to 115; Algernon Sidney being a teller of the noes. Commons' Journals. In these votes the house, that is, the presbyterian majority, acted with extreme imprudence; not having provided for the payment of the army's arrears at the time they were thus disbanding them. Whitelock advised Hollis and his party not to press the disbanding; and on finding them obstinate, drew off, as he tells us, from that connexion, and came nearer to Cromwell, p. 248. This, however, he had begun to do rather earlier. Independently of the danger of disgusting the army, it is probable that, as soon as it was disbanded, the royalists would have been up in arms. For the growth of this discontent, day by day, peruse Whitelock's Journals for March and the three following months, as well as the Parliamentary History.

[1] It was only carried by 159 to 147, Mar. 5. 1647, that the forces should be commanded by Fairfax. But on the 8th, the house voted without a division, that no officer under him should be above the rank of a colonel, and that no member of the house should have any command in the army. It is easy to see at whom this was levelled. Commons' Journals. They voted at the same time that the officers should all take the covenant, which had been rejected two years before; and, by a majority of 136 to 108, that they should all conform to the government of the church, established by both houses of parliament.

[2] Clar. State Papers, ii. 365. The army, in a declaration not long after the king fell into their power, June 24., use these expressions:—"We clearly profess that we do not see how there can be any peace to this kingdom firm or lasting, without a due provision for the rights, quiet, and immunity of his majesty, his royal family, and his late partakers." Parl. History 647.

Those who have once bowed their knee to force, must expect that force will be for ever their master. In a few weeks after this submission of the commons to the army, they were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian politics of the city, who compelled them by actual violence to rescind several of their late votes.[1] Trampled upon by either side, the two speakers, several peers, and a great number of the lower house, deemed it somewhat less ignominious, and certainly more politic, to throw themselves on the protection of the army. They were accordingly soon restored to their places, at the price of a more complete and irretrievable subjection to the military power than they had already undergone. Though the presbyterians maintained a pertinacious resistance within the walls of the house, it was evident that the real power of command was gone from them, and that Cromwell with the army must either become arbiters between the king and parliament, or crush the remaining authority of both.[2]

There are few circumstances in our history which have caused more perplexity to inquirers than the conduct of Cromwell and his friends towards the king in the year 1647. Those who look only at the ambitious and dissembling character of that leader, or at the fierce republicanism imputed to Ireton, will hardly believe that either of them could harbour any thing like sincere designs of restoring him even to that remnant of sovereignty which the parliament would have spared. Yet, when we consider attentively the public documents and private memoirs of that period, it does appear probable that their first intentions towards the king were not unfavourable, and so far sincere that it was their project to make use of his name rather than totally to set him aside. But whether by gratifying Cromwell and his associates with honours, and throwing the whole administration into their hands, Charles would have long contrived to keep a tarnished crown on his head, must be very problematical.

The new gaolers of this unfortunate prince began by treating him with unusual indulgence, especially in permitting his episcopal chaplains

[1] Hollis censures the speakers of the two houses and others who fled to the army from this mob; the riot being "a sudden tumultuous thing of young idle people without design." Possibly this might be the case; but the tumult at the door of the house, 26th July, was such that it could not be divided. Their votes were plainly **null**, as being made under duress. Yet the presbyterians were so strong in the commons, that a resolution to annul all proceedings during the speaker's absence was lost by 97 to 95, after his return; and it was only voted to repeal them. A motion to declare that the houses, from 26th July to 6th Aug. had been under a force, was also lost by 78 to 75. Journals, 9th and 17th Aug. The lords however passed an ordinance to this effect; and after once more rejecting it, the commons agreed on Aug. 20., with a proviso that no one should be called in question for what had been done.

[2] These transactions are best read in the Commons' Journals, and the Parl. Hist., and next to those in Whitelock. Hollis relates them with great passion; and Clarendon, as he does every thing else that passed in London, very imperfectly. He accounts for the earl of Manchester and the speaker Lenthal's retiring to the army by their persuasion that the chief officers had nearly concluded a treaty with the king, and resolved to have their shares in it. This is a very unnecessary surmise. Lenthal was a poor-spirited man, easily influenced by those whom he thought the strongest, and in this instance, according to Ludlow, p. 206., persuaded with difficulty by Haslerig to go to the army. Manchester, indeed, had more courage and honour; but he was not of much capacity, and his parliamentary conduct was not systematic. But upon the whole it is obvious, by reading the list of names (Parl. Hist. 757.), that the king's friends were rather among those who stayed behind, especially in the lords, than among those who went to the army. Seven of eight peers who continued to sit from 26th July to 6th of Aug. 1647, were impeached for it afterwards (Parl. Hist. 764.), and they were all of the most moderate party. If the king had any previous connexion with the city, he

to attend him. This was deemed a pledge of what he thought an invaluable advantage in dealing with the army, that they would not insist upon the covenant, which in fact was nearly as odious to them as to the royalists, though for very different reasons. Charles, naturally sanguine, and utterly incapable in every part of his life of taking a just view of affairs, was extravagantly elated by these equivocal testimonies of good-will. He blindly listened to private insinuations from rash or treacherous friends, that the soldiers were with him, just after his seizure by Joyce. "I would have you to know, sir," he said to Fairfax, "that I have as good an interest in the army as your self;" an opinion as injudiciously uttered as it was absurdly conceived.[1] These strange expectations account for the ill reception which in the hasty irritation of disappointment he gave to the proposals of the army, when they were actually tendered to him at Hampton Court, and which seems to have eventually cost him his life. These proposals appear to have been drawn up by Ireton, a lawyer by education, and a man of much courage and capacity. He had been supposed, like a large proportion of the officers, to aim at a settlement of the nation under a democratical polity. But the army, even if their wishes in general went so far, which

acted very disingenuously in his letter to Fairfax, Aug. 3., while the contest was still pending; wherein he condemns the tumults and declares his unwillingness that his friends should join with the city against the army, whose proposals he had rejected the day before with an imprudence of which he was now sensible. This letter, as actually sent to Fairfax, is in the Parl. Hist. 734., and may be compared with a rough draught of the same, preserved in Clarendon Papers, 373., from which it materially differs, being much sharper against the city.

[1] Fairfax's Memoirs in Maseres's Collection of Tracts, vol. i. p. 447. "By this," says Fairfax, who had for once found a man less discerning of the times than himself, "I plainly saw the broken reed he leaned on. The agitators had brought the king into an opinion that the army was for him." Ireton said plainly to the king, "Sir, you have an intention to be the arbitrator between the parliament and us; and we mean to be so between your majesty and the parliament." Berkley's Memoirs, ibid. p. 360.

This folly of the king, if Mrs. Hutchinson is well informed, alienated Ireton, who had been more inclined to trust him than is commonly believed. "Cromwell," she says, "was at that time so incorruptibly faithful to his trust and the people's interest, that he could not be drawn in to practise even his own usual and natural dissimulation on this occasion. His son-in-law, Ireton, that was as faithful as he, was not so fully of the opinion, till he had tried it, and found to the contrary, but that the king might have been managed to comply with the public good of his people, after he could no longer uphold his own violent will; but upon some discourses with him, the king uttering these words to him, 'I shall play my game as well as I can,' Ireton replied, 'If your majesty have a game, you must give us also the liberty to play ours.' Colonel Hutchinson privately discoursing with his cousin about the communications he had had with the king, Ireton's expressions were these:—'He gave us words, and we paid him in his own coin, when we found he had no real intention to the people's good, but to prevail, by our factions, to regain by art what he had lost in fight.'" p. 274.

It must be said for the king, that he was by no means more sanguine or more blind than his distinguished historian and minister. Clarendon's private letters are full of strange and absurd expectations. Even so late as Oct. 1647, he writes to Berkley in high hopes from the army, and presses him to make no concessions except as to persons. "If they see you will not yield, they must; for sure they have as much or more need of the king than he of them." P. 379. The whole tenor, indeed, of Clarendon's correspondence demonstrates that notwithstanding the fine remarks occasionaly scattered through his history, he was no practical statesman, nor had any just conception, at the time, of the course of affairs. He never flinched from one principle, not very practicable or rational in the circumstances of the king; that nothing was to be receded from which had ever been demanded. This may be called magnanimity; but no foreign or domestic dissension could be settled, if all men were to act upon it, or if all men, like Charles and Clarendon, were to expect that Providence would interfere to support what seems to them the best, that is, their own cause. The following passage is a specimen:—"Truly I am so unfit to bear a part in carrying on this new contention [by negotiation and concession], that I would not, to preserve myself, wife, and children from the lingering death of want by famine (for a sudden death would require no courage), consent to the lessening any part, which I take to be in the function of a bishop, or the taking away the smallest prebendary in the church, or to be bound not to endeavour to alter any such alteration." Id. vol. iii. p. 2. Feb. 4. 1648.

is hardly evident, were not yet so decidedly masters as to dictate a form of government uncongenial to the ancient laws and fixed prejudices of the people. Something of this tendency is discoverable in the propositions made to the king, which had never appeared in those of the parliament. It was proposed that parliaments should be biennial; that they should never sit less than a hundred and twenty days, nor more than two hundred and forty; that the representation of the commons should be reformed, by abolishing small boroughs and increasing the number of members for counties, so as to render the house of commons, as near as might be, an equal representation of the whole. In respect of the militia and some other points, they either followed the parliamentary propositions of Newcastle, or modified them favourably for the king. They excepted a very small number of the king's adherents from the privilege of paying a composition for their estates, and set that of the rest considerably lower than had been fixed by the parliament. They stipulated that the royalists should not sit in the next parliament. As to religion, they provided for liberty of conscience, declared against the imposition of the covenant, and by insisting on the retrenchment of the coercive jurisdiction of bishops and the abrogation of penalties for not reading the common prayer, left it to be implied that both might continue established.[1] The whole tenor of these propositions was in a style far more respectful to the king, and lenient towards his adherents, than had ever been adopted since the beginning of the war. The sincerity indeed of these overtures might be very questionable, if Cromwell had been concerned in them; but they proceeded from those elective tribunes called Agitators, who had been established in every regiment to superintend the interests of the army.[2] And the terms were surely as good as Charles had any reason to hope. The severities against his party were mitigated. The grand obstacles to all accommodation, the covenant and presbyterian establishment, were at once removed; or, if some difficulty might occur as to the latter, in consequence of the actual possession of benefices by the presbyterian clergy, it seemed not absolutely insuperable. For the changes projected in the constitution of parliament, they were not necessarily injurious to the monarchy. That parliament should not be dissolved until it had sat a certain time, was so salutary a provision, that the triennial act was hardly complete without it.

It is however probable, from the king's extreme tenaciousness of his prerogative, that these were the conditions that he found it most difficult to endure. Having obtained, through sir John Berkley, a sight of the

[1] Parl. Hist. 738. Clarendon talks of these proposals as worse than any the king had ever received from the parliament; and Hollis says they "dissolved the whole frame of the monarchy." It is hard to see, however, that they did so in a greater degree than those which he had himself endeavoured to obtain as a commissioner at Uxbridge. As to the church, they were manifestly the best that Charles had ever seen. As to his prerogative and the power of the monarchy, he was so thoroughly beaten, that no treaty could do him any essential service; and he had, in truth, only to make his election, whether to be the nominal chief of an aristocratical or a democratical republic. In a well written tract, called Vox Militaris, containing a defence of the army's proceedings and intentions, and published apparently in July, 1647, their desire to preserve the king's rights, according to their notion of them, and the general laws of the realm, is strongly asserted.

[2] The precise meaning of this word seems obscure. Some have supposed it to be a corruption of adjutators, as if the modern term adjutant meant the same thing. But I find agitator always so spelled in the pamphlets of the time.

propositions before they were openly made, he expressed much displeasure; and said that if the army were inclined to close with him, they would never have demanded such hard terms. He seems to have principally objected, at least in words, to the exception of seven unnamed persons from pardon, to the exclusion of his party from the next parliament, and to the want of any articles in favour of the church. Berkley endeavoured to show him that it was not likely that the army, if meaning sincerely, should ask less than this. But the king, still tampering with the Scots, and keeping his eyes fixed on the city and parliament, at that moment came to an open breach with the army, disdainfully refused the propositions when publicly tendered to him, with such expressions of misplaced resentment and preposterous confidence as convinced the officers that they could neither conciliate nor trust him.[1] This unexpected haughtiness lost him all chance with those proud and republican spirits; and as they succeeded about the same time in bridling the presbyterian party in parliament, there seemed no necessity for an agreement with the king, and their former determinations of altering the frame of government returned with more revengeful fury against his person.[2]

Charles's continuance at Hampton Court, there can be little doubt, would have exposed him to such imminent risk that in escaping from

[1] Berkley's Memoirs, 336. He told lord Capel about this time that he expected a war between Scotland and England; that the Scots hoped for the assistance of the presbyterians; and that he wished his own party to rise in arms on a proper conjuncture, without which he could not hope for much benefit from the others. Clarendon, v. 476.

[2] Berkley, 368. &c. Compare the letter of Ashburnham, published in 1648, and reprinted in 1764; but probably not so full as the MS. in the earl of Ashburnham's possession, also the memoirs of Hollis, Huntingdon, and Fairfax, which are all in Maseres's Collection; also Ludlow, Hutchinson, Clarendon, Burnet's Memoirs of Hamilton, and some despatches in 1647 and 1648, from a royalist in London, printed in the appendix in the second volume of the Clarendon Papers. This correspondent of secretary Nicholas believes Cromwell and Ireton to have all along planned the king's destruction, and set the levellers on, till they proceeded so violently that they were forced to restrain them. This also is the conclusion of Major Huntingdon, in his Reasons for laying down his Commission. But the contrary appears to me more probable.

Two anecdotes, well known to those conversant in English history, are too remarkable to be omitted. It is said by the editor of Lord Orrery's Memoirs, as a relation which he had heard from that noble person, that in a conversation with Cromwell concerning the king's death, the latter told him, he and his friends had once a mind to have closed with the king, fearing that the Scots and presbyterians might do so, when one of their spies, who was of the king's bed-chamber, gave them information of a letter from his majesty to the queen, sewed up in the skirt of a saddle, and directing them to an inn where it might be found. They obtained the letter accordingly, in which the king said, that he was courted by both factions, the Scots presbyterians and the army; that those which bade fairest for him should have him; but he thought he should rather close with the Scots than the other. Upon this, finding themselves unlikely to get good terms from the king, they vowed his destruction. Carte's Ormond, ii. 12.

A second anecdote is alluded to by some earlier writers, but is particularly told in the following words, by Richardson the painter, author of some anecdotes of Pope, edited by Spence. "Lord Bolingbroke told us, June 12. 1742, (Mr. Pope, lord Marchmont, and myself,) that the second earl of Oxford had often told him that he had seen, and had in his hands, an original letter that Charles the First wrote to his queen, in answer to one of hers that had been intercepted, and then forwarded to him; wherein she had reproached him for having made those villains too great concessions, viz., that Cromwell should be lord-lieutenant of Ireland for life without account; that that kingdom should be in the hands of the party, with an army there kept which should know no head but the lieutenant; that Cromwell should have a garter, &c.: that in this letter of the king's it was said, that she should leave him to manage, who was better informed of all circumstances than she could be; but she might be entirely easy as to whatever concessions he should make them; for that he should know in due time how to deal with the rogues, who instead of a silken garter, should be fitted with a hempen cord. So the letter ended; which answer as they waited for, so they intercepted accordingly; and it determined his fate. This letter lord Oxford said he had offered 500*l.* for."

The authenticity of this latter story has been constantly rejected by Hume and the advocates of Charles in general; and for one reason among others, that it looks like a misrepresentation

thence, he acted on a reasonable principle of self-preservation. He might probably, with due precautions, have reached France or Jersey. But the hastiness of his retreat from Hampton Court giving no time,[1] he fell again into the toils, through the helplessness of his situation, and the foolish counsels of one whom he trusted.[1] The fortitude of his own mind sustained him in this state of captivity and entire seclusion from his friends. No one, however sensible to the infirmities of Charles's disposition, and the defects of his understanding, can refuse admiration to that patient firmness and unaided acuteness which he displayed throughout the last and most melancholy year of his life. He had now abandoned all expectation of obtaining any present terms for the church or crown. He proposed therefore what he had privately empowered Murray to offer the year before, to confirm the presbyterian government for three years, and to give up the militia during his whole life, with other concessions of importance. (Parl. Hist. 799.) To preserve the church lands from sale, to shield his friends from proscription, to obtain a legal security for the restoration of the monarchy in his son, were from henceforth the main objects of all his efforts. It was however far too late, even for these moderate conditions of peace. Upon his declining to pass four bills, tendered to him as preliminaries of a treaty, which on that very account, besides his objections to part of their contents, he justly considered as unfair, the parliament voted that no more addresses should be made to him, and that they would receive no more messages.[2] He was placed in close and solitary confinement; and at a meeting of the principal officers at Windsor it was concluded to bring him to trial, and avenge the blood shed in the war by an awful example of punishment; Cromwell and Ireton, if either of them had

of that told by lord Orrery, which both stands on good authority, and is perfectly conformable to all the memoirs of the time. I have however been informed, that a memorandum nearly conformable to Richardson's anecdote is extant, in the handwriting of lord Oxford.

It is possible that this letter is the same with that mentioned by lord Orrery; and in that case was written about the month of October. Cromwell seems to have been in treaty with the king as late as Sept.; and advised him, according to Berkley, to reject the proposals of the parliament in that month. Herbert mentions an intercepted letter of the queen (Memoirs, 60.); and even his story proves that Cromwell and his party broke off with Charles from a conviction of his dissimulation. See Laing's note, iii. 562.; and the note by Strype, therein referred to, on Kennet's Complete Hist. of England, iii. 170.; which speaks of a "constant tradition" about this story, and is more worthy of notice, because it was written before the publication of Lord Orrery's Mems., or of the Richardsoniana.

[1] Ashburnham gives us to understand that the king had made choice of the Isle of Wight, previously to his leaving Hampton Court, but probably at his own suggestion. This seems confirmed by the king's letter in Burnet's Mem. of Dukes of Hamilton, 326. Clarendon's account is a romance, with a little mixture, probably, of truth. I have been told that in the manuscript of Ashburnham in his noble descendant's possession, it is asserted that he was in previous of the correspondence with Hammond.

[2] This vote was carried by 141 to 92, Jan. 15. Parl. Hist. 831. App. to 2nd. vol. of Clar. State Papers. Cromwell was now vehement against the king, though he had voted in his favour on Sept. 22. Journals and Berkley, 372. A proof that the king was meant to be wholly rejected is, that at this time, in the list of the navy, the expression "his majesty's ship," was changed to "the parliament's ship." Whitelock, 291.

The four bills were founded on four propositions (for which I refer to Hume or the Parl. Hist., not to Clarendon, who has misstated them) sent down from the Lords. The lower house voted to agree with them by 125 to 106; Sidney and Evelyn tellers for the Ayes, Martin and Morley for the Noes. The increase of the minority is remarkable, and shows how much the king's refusal of the terms offered him in Sept., and his escape from Hampton Court, had swollen the commonwealth party; to which, by the way, colonel Sidney at this time seems not to have belonged. Ludlow says, that the party hoped the king would not grant the four bills, i. 224. The commons published a declaration of their reasons for making no further addresses to the king, wherein they more than insinuate his participation in the murder of his father by Buckingham. Parl. Hist. 847.

been ever favourable to the king, acceding at this time to the severity of the rest.

Yet in the midst of this peril and seeming abandonment, his affairs were really less desperate than they had been; and a few rays of light broke for a time through the clouds that enveloped him. From the hour that the Scots delivered him up at Newcastle, they seem to have felt the discredit of such an action, and longed for the opportunity o redeeming their public name. They perceived more and more that a well-disciplined army, under a subtle chief inveterately hostile to them, were rapidly becoming masters of England. Instead of that covenanted alliance, that unity in church and state, they had expected, they we e to look for all the jealousy and dissension that a complete discordance in civil and spiritual polity could inspire. Their commissioners therefore in England, the earl of Lanark, always a moderate royalist, and the earl of Lauderdale, a warm presbyterian, had kept up a secret intercourse with the king at Hampton Court. After his detention at Carisbrook, they openly declared themselves against the four bills proposed by the English parliament: and at length concluded a private treaty with him, by which, on certain terms quite as favourable as he could justly expect, they bound themselves to enter England with an army in order to restore him to his freedom and dignity.[1] This invasion was to be combined with risings in various parts of the country; the presbyterian and royalist, though still retaining much of animosity towards each other, concurring at least in abhorrence of military usurpation; and the common people having very generally returned to that affectionate respect for the king's person, which sympathy for his sufferings, and a sense how little they had been gainers by the change of government, must naturally have excited.[2] The unfortunate issue of the Scots expedition under the duke of Hamilton, and of the various insurrections throughout England, quelled by the vigilance and good conduct of Fairfax and Cromwell, is well known. But these formidable manifestations of the public sentiment in favour of peace with the king on honourable conditions, wherein the city of London, ruled by the presbyterian ministers, took a share, compelled the house of commons to retract its measures. They came to a vote, by 165 to 99, that they would not alter the fundamental government by king, lords, and commons (April 28. 1648. Parl. Hist. 883.); they abandoned their impeachment against seven peers, the mos

[1] Clarendon, whose aversion to the Scots warps his judgment, says that this treaty contained many things dishonourable to the English nation. Hist. v. 532. The king lost a good deal in the eyes of this uncompromising statesman, by the concessions he made in the Isle of Wight. State Papers, 387. I cannot, for my own part, see any thing derogatory to England in the treaty; for the temporary occupation of a few fortified towns in the north can hardly be called so. Charles, there is some reason to think, had on a former occasion made offers to the Scots far more inconsistent with his duty to this kingdom.

[2] Clarendon. May, Breviate of the Hist. of the Parliament, in Maseres's Tracts, i. 113. Whitelock, 307. 317., &c. In conference between the two houses, July 25. 1648, the commons gave as a reason for insisting on the king's surrender of the militia as a preliminary to a treaty, that such was the disaffection to the parliament on all sides, that without the militia they could never be secure. Rush. vi. 444. "The chief citizens of London," says May, 122., "and others called presbyterians, though the presbyterian Scots abominated this army, wished go d success to the Scots no less than the malignants did. Whence let the reader judge of th times." The fugitive sheets of this year, such as the Mercurius Aulicus, bear witness to th exulting and insolent tone of the royalists. They chuckle over Fairfax and Cromwell, as if they had caught a couple of rats in a trap.

moderate of the upper house, and the most obnoxious to the army;[1] they restored the eleven members to their seats (June 8.); they revoked their resolution against a personal treaty with the king, and even that which required his assent by certain preliminary articles.[2] In a word, the party for distinction's sake called presbyterian, but now rather to be denominated constitutional, regained its ascendancy. This change in the counsels of parliament brought on the treaty of Newport.

The treaty of Newport was set on foot and managed by those politicians of the house of lords, who having long suspected no danger to themselves but from the power of the king, had discovered, somewhat of the latest, that the crown itself was at stake, and that their own privileges were set on the same cast. Nothing was more remote from the intentions of the earl of Northumberland or lord Saye, than to see themselves pushed from their seats by such upstarts as Ireton and Harrison; and their present mortification afforded a proof how men reckoned wise in their generation become the dupes of their own selfish, crafty, and pusillanimous policy. They now grew anxious to see a treaty concluded with the king. Sensible that it was necessary to anticipate, if possible, the return of Cromwell from the north, they implored him to comply at once with all the propositions of parliament, or at least to yield in the first instance as far as he meant to go.[3]

[1] June 6. These peers were the earls of Suffolk, Middlesex, and Lincoln, lords Willoughby of Parham, Berkley, Hunsdon, and Maynard. They were impeached for sitting in the house during the tumults from 26th of July to 6th of Aug., 1647. The earl of Pembroke, who had also continued to sit, merely because he was too stupid to discover which party was likely to prevail, escaped by truckling to the new powers.

[2] See Parl. Hist. 823. 892. 904. 921. 924. 959. 996. for the different votes on this subject, wherein the presbyterians gradually beat the independent or republican party, but with very small and precarious majorities.

[3] Clarendon, vi. 155. He is very absurd in imagining that any of the parliamentary commissioners would have been satisfied with "an act of indemnity and oblivion."

That the parliament had some reason to expect the king's firmness of purpose to give way, in spite of all his haggling, will appear from the following short review of what had been done. 1. At Newmarket, in June, 1642, he absolutely refused the nineteen propositions tendered to him by the lords and commons. 2. In the treaty of Oxford, March, 1643, he seems to have made no concessions, not even promising an amnesty to those he had already excluded from pardon. 3. In the treaty of Uxbridge, no mention was made on his side of exclusion from pardon; he offered to vest the militia for seven years in commissioners jointly appointed by himself and parliament, so that it should afterwards return to him, and to limit the jurisdiction of the bishops. 4. In the winter of 1645, he not only offered to disband his forces, but to let the militia be vested for seven years in commissioners to be appointed by the two houses, and afterwards to be settled by bill: also to give the nomination of officers of state and judges pro hâc vice to the houses. 5. He went no farther in substance till May, 1647; when he offered the militia for ten years, as well as great limitations of episcopacy, and the continuance of presbyterian government for three years; the whole matter to be afterwards settled by bill on the advice of the assembly of divines, and twenty more of his own nomination. 6. In his letter from Carisbrook, Nov. 1647, he gave up the militia for his life. This was in effect to sacrifice almost every thing as to immediate power; but he struggled to save the church lands from confiscation, which would have rendered it hardly practicable to restore episcopacy in future. His further concessions in the treaty of Newport, though very slowly extorted, were comparatively trifling.

What Clarendon thought of the treaty of Newport may be imagined. "You may easily conclude," he writes to Digby, "how fit a counsellor I am like to be, when the best that is proposed is that which I *would not consent unto to preserve the kingdom from ashes*. I can tell you worse of myself than this; which is, that there may be some reasonable expedients which possibly might in truth restore and preserve all, in which I could bear no part." P. 459. See also p. 351. and 416. I do not divine what he means by this. But what he could not have approved was, that the king had no thoughts of dealing sincerely with the parliament in this treaty, and gave Ormond directions to obey all his wife's commands, but not to obey any further orders he might send, nor to be startled at his great concessions respecting Ireland, for they would come to nothing. Carte's Papers, i. 185. See Mr. Brodie's remarks on this, iv. 143-146. He had agreed to give up the government of Ireland for twenty years to the parlia-

They had not, however, mitigated in any degree the rigorous conditions so often proposed; nor did the king during this treaty obtain any reciprocal concession worth mentioning in return for his surrender of almost all that could be demanded. Did the positive adherence of the parliament to all these propositions, in circumstances so perilous to themselves, display less unreasonable pertinacity than that so often imputed to Charles? Or if, as was the fact, the majority which the presbyterians had obtained was so precarious that they dared not hazard it by suggesting any more moderate counsels, what rational security would the treaty have afforded him, had he even come at once into all their requisitions? His real error was to have entered upon any treaty, and still more to have drawn it out by tardy and ineffectual capitulations. There had long been only one course either for safety or for honour, the abdication of his royal office; now probably too late to preserve his life, but still more honourable than the treaty of Newport. Yet though he was desirous to make his escape to France, I have not observed any hint that he had thoughts of resigning the crown; whether from any mistaken sense of obligation, or from an apprehension that it might affect the succession of his son.

There can be no more erroneous opinion than that of such as believe that the desire of overturning the monarchy produced the civil war, rather than that the civil war brought on the former. In a peaceful and ancient kingdom like England, the thought of change could not spontaneously arise. A few speculative men, by the study of antiquity, or by observation of the prosperity of Venice and Holland, might be led to an abstract preference of republican politics; some fanatics might aspire to a Jewish theocracy; but at the meeting of the Long Parliament, we have not the slightest cause to suppose that any party, or any number of persons among its members, had formed what must then have appeared so extravagant a conception.[1] The insuperable

ment. In his answer to the propositions at Newcastle, sent in May, 1647, he had declared that he would give full satisfaction with respect to Ireland. But he thus explains himself to the queen:—"I have so couched that article that, if the Irish give me cause, I may interpret it enough to their advantage. For I only say that I will give them (the two houses) full satisfaction as to the management of the war, nor do I promise to continue the war; so that, if I find reason to make a good peace there, my engagement is at an end. Wherefore make this my interpretation known to the Irish." Clar. State Papers. "What reliance," says Mr. Laing, from whom I transcribe this passage, (which I cannot find in the book quoted) "could parliament place at the beginning of the dispute, or at any subsequent period, on the word or moderation of a prince, whose solemn and written declarations were so full of equivocation?" Hist. of Scotland, iii. 409. It may here be added that though Charles had given his parole to colonel Hammond, and had the sentinels removed in consequence, he was engaged during most part of his stay at Carisbrook in schemes for an escape. See Col. Cooke's Narrative, printed with Herbert's Memoirs; and in Rushw. vi. 534. But his enemies were apprised of this intention, and even of an attempt to escape by removing a bar of his window, as appears by the letters from the committee of Derby House, Cromwell, and others, to Col. Hammond, published in 1764.

[1] Clarendon mentions an expression that dropped from Henry Martin in conversation, not long after the meeting of the parliament: "I do not think one man wise enough to govern us all." This may doubtless be taken in a sense perfectly compatible with our limited monarchy. But Martin's republicanism was soon apparent; he was sent to the Tower in Aug. 1643, for language reflecting on the king. Parl. Hist. 161. A Mr. Chillingworth had before incurred the same punishment for a like offence, Dec. 1. 1641. Nalson. ii. 714. Sir Henry Ludlow, father of the regicide, was also censured on the same account. As the opposite faction grew stronger, Martin was not only restored to his seat, but the vote against him was expunged. Vane, I presume, took up republican principles pretty early; perhaps also Haslerig. With these exceptions, I know not that we can fix on any individual member of parliament the charge of an intention to subvert the constitution till 1646 or 1647.

distrust of the king's designs, the irritation excited by the sufferings of the war, the impracticability, which every attempt at negotiation displayed, of obtaining his acquiescence to terms deemed indispensable, gradually created a powerful faction, whose chief bond of union was a determination to set him aside.[1] What further scheme they had planned is uncertain; none probably in which any number were agreed: some looked to the prince of Wales, others perhaps, at one time, to the elector palatine;[2] but necessity itself must have suggested to many the idea of a republican settlement. In the new-modelled army of 1645, composed of independents and enthusiasts of every denomination, a fervid eagerness for changes in the civil polity, as well as in religion, was soon found to predominate. Not checked, like the two houses, by attachment to forms, and by the influence of lawyers, they launched forth into varied projects of reform, sometimes judicious, or at least plausible, sometimes wildly fanatical. They reckoned the king a tyrant, whom, as they might fight against, they might also put to death, and whom it were folly to provoke if he were again to become their master. Elated with their victories, they began already in imagination to carve out the kingdom for themselves; and remembered that saying so congenial to a revolutionary army, that the first of monarchs was a successful leader, the first of nobles were his followers.[3]

The knowledge of this innovating spirit in the army gave confidence to the violent party in parliament, and increased its numbers by the accession of some of those to whom nature has given a fine sense for discerning their own advantage. It was doubtless swollen through the publication of the king's letters, and his pertinacity in clinging to

[1] Pamphlets may be found as early as 1643 which breathe this spirit: but they are certainly rare till 1645 and 1646. Such are "Plain English," 1643; "The Character of an Anti-malignant," 1645; "Last Warning to all the Inhabitants of London," 1647.

[2] Charles Louis, elector palatine, elder brother of the princes Rupert and Maurice, gave cause to suspect that he was looking towards the throne. He left the king's quarters where he had been at the commencement of the war, and retired to Holland; whence he wrote, as well as his mother, the queen of Bohemia, to the parliament, disclaiming and renouncing prince Rupert, and begging their own pensions might be paid. He came over to London in Aug. 1644, took the covenant, and courted the parliament. They showed, however, at first, a good deal of jealousy of him; and intimated that his affairs would prosper better by his leaving the kingdom. Whitelock, 101. Rush. iv. 359. He did not take this hint, and obtained next year an allowance of 8000*l.* per annum. Id. 145. Lady Ranelagh, in a letter to Hyde, Mar. 1644, conjuring him by his regard for lord Falkland's memory, to use all his influence to procure a message from the king for a treaty, adds: "Methinks what I have informed my sister, and what she will inform you, of the posture the prince elector's affairs are in here, should be a motive to hasten away this message." Clar. State Papers, ii. 167. Clarendon himself, in a letter to Nicholas, Dec. 12. 1646, (where he gives his opinion, that the independents look more to a change of the king and his line, than of the monarchy itself, and would restore the full prerogative of the crown to one of their own choice,) proceeds in these remarkable words: "And I pray God they have not such a nose of wax ready for their impression. This it is makes me tremble more than all their discourses of destroying monarchy; and that towards this end, they find assistance from those who from their hearts abhor their confusions." P. 308. These expressions seem more applicable by far to the elector than to Cromwell. But the former was not dangerous though it was deemed fit to treat him with respect. In Mar. 1647, we find a committee of both houses appointed to receive some intelligence which the prince elector desired to communicate to the parliament of great importance to the protestant religion. Whitelock, 241. Nothing farther appears about this intelligence; which looks as if he was merely afraid of being forgotten. He left England in 1649, and died in 1680.

[3] Baxter's Life, 50. He ascribes the increase of enthusiasm in the army to the loss of its presbyterian chaplains, who left it for their benefices, on the reduction of the king's party and the new-modelling of the troops. The officers then took on them to act as preachers. Id. 54.; and Neal, 183. I conceive that the year 1645 is that to which we must refer the appearance of a republican party in considerable numbers, though not yet among the house of commons.

his prerogative. And the complexion of the house of commons was materially altered by the introduction at once of a large body of fresh members. They had at the beginning abstained from issuing writs to replace those whose death or expulsion had left their seats vacant. These vacancies, by the disabling votes against all the king's party,[1] became so numerous that it seemed a glaring violation of the popular principles to which they appealed, to carry on the public business with so maimed a representation of the people. It was however plainly impossible to have elections in many parts of the kingdom while the royal army was in strength; and the change by filling up nearly two hundred vacancies at once, was likely to become so important, that some feared that the cavaliers, others that the independents and republicans, might find their advantage in it.[2] The latter party were generally earnest for new elections; and carried their point against the presbyterians in September, 1645, when new writs were ordered for all the places which were left deficient of one or both representatives.[3] The result of these elections, though a few persons rather friendly to the king came into the house, was on the whole very favourable to the army. The self-denying ordinance no longer being in operation, the principal officers were elected on every side; and, with not many exceptions, recruited the ranks of that small body which had already been marked by implacable dislike of the king, and by zeal for a total new-modelling of the government.[4] In the summer of 1646, this party had so far obtained the upper hand, that, according to one of our best authorities, the Scots commissioners had all imaginable difficulty to prevent his deposition. In the course of the year 1647, more overt proofs of a design to change the established constitution were given by a party out of doors. A petition was addressed "to the supreme authority of this nation, the commons assembled in parliament." It was voted upon a division, that the house dislikes this petition, and cannot approve of its being delivered; and afterwards, by a majority of only 94 to 86, that it was seditious and insolent and should be burned by the hangman.[5] Yet the first decisive proof, perhaps, which the journals of parliament afford of the existence of a republican party, was the vote of 22d Sept., 1647, that they would once again make application to the king for those things which they judged necessary for the

[1] These passed against the royalist members separately, and for the most part in the first months of the war.

[2] "The best friends of the parliament were not without fears what the issue of the new elections might be; for though the people durst not choose such as were open enemies to them, yet probably they would such as were most likely to be for a peace on any terms, corruptly preferring the fruition of their estates and sensual enjoyments before the public interest," &c. Ludlow, i. 168. This is a fair confession how little the commonwealth party had the support of the nation.

[3] C. Journals. Whitelock, 168. The borough of Southwark had just before petitioned for a new writ, its member being dead or disabled.

[4] That the house of commons, in Dec. 1645, entertained no views of altering the fundamental constitution, appears from some of their resolutions as to conditions of peace: "That Fairfax should have an earldom, with 5000*l.* a year; Cromwell and Waller baronies, with half that estate; Essex, Northumberland, and two more be made dukes; Manchester and Salisbury marquises, and other peers of their party be elevated to higher ranks; Haslerig, Stapleton, and Skippon to have pensions." Parl. Hist. 403. Whitelock, 182. These votes do not speak much for the magnanimity and disinterestedness of that assembly, though it may suit political romancers to declaim about it.

[5] Commons' Journals, May 4. and 18. 1647. This minority were not, in general, republican; but were unwilling to increase the irritation of the army by so strong a vote.

welfare and safety of the kingdom. This was carried by 70 to 23.[1] Their subsequent resolution of Jan. 4. 1648, against any further addresses to the king, which passed by a majority of 141 to 91, was a virtual renunciation of allegiance. The lords, after a warm debate, concurred in this vote. And the army had in Nov. 1647, before the king's escape from Hampton Court, published a declaration of their design for the settlement of the nation under a sovereign representative assembly, which should possess authority to make or repeal laws, and to call magistrates to account.

We are not certainly to conclude that all who, in 1648, had made up their minds against the king's restoration, were equally averse to all legal government. The prince of Wales had taken so active, and, for a moment, so successful a share in the war of that year, that his father's enemies were become his own. Meetings however were held, where the military and parliamentary chiefs discussed the schemes of raising the duke of York, or his younger brother the duke of Glocester, to the throne. Cromwell especially wavered, or pretended to waver, as to the settlement of the nation; nor is there any evidence, as far as I know, that he had ever professed himself averse to monarchy, till, dexterously mounting on the wave which he could not stem, he led on those zealots who had resolved to celebrate the inauguration of their new commonwealth with the blood of a victim king.[2]

It was about the end of 1647, as I have said, that the principal officers took the determination, which had been already menaced by some of the agitators, of bringing the king, as the first and greatest delinquent to public justice.[3] Too stern and haughty, too confident of

[1] Commons' Journals, Whitelock, 271. Parl. Hist. 781. They had just been exasperated by his evasion of their propositions. Id. 778. By the smallness of the numbers, and the names of the tellers, it seems as if the presbyterian party had been almost entirely absent; which may be also inferred from other parts of the Journals. See Oct. 9. for a long list of absentees. Haslerig and Evelyn, both of the army faction, told the Ayes, Martin and sir P. Wentworth the Noes. The house had divided the day before on the question for going into a committee to take this matter into consideration, 84 to 34; Cromwell and Evelyn telling the majority, Wentworth and Rainsborough, the minority. I suppose it is from some of these divisions that Baron Maseres has reckoned the republican party in the house not to exceed thirty in number.

It was resolved on Nov. 6. 1647, that the king of England, for the time being, was bound in justice, and by the duty of his office, to give his assent to all such laws as by the lords and commons in parliament shall be adjudged to be for the good of the kingdom, and by them tendered unto him for his assent. But the previous question was carried on the following addition: "And in case the laws, so offered unto him, shall not thereupon be assented unto by him, that nevertheless they are as valid to all intents and purposes as if his assent had been thereunto had and obtained, which they do insist upon as an undoubted right." Commons' Journals.

[2] Ludlow says, that Cromwell, "finding the king's friends grow strong in 1648, began to court the commonwealth's party. The latter told him he knew how to cajole and give them good words, when he had occasion to make use of them; whereat, breaking out into a rage, he said they were a proud sort of people, and only considerable in their own conceits." P. 240. Does this look as if he had been reckoned one of them?

[3] Clarendon says that there were many consultations among the officers about the best mode of disposing of the king; some were for deposing him, others for poison or assassination, which, he fancies, would have been put in practice, if they could have prevailed on Hammond. But this is not warranted by our better authorities.

It is hard to say at what time the first bold man dared to talk of bringing the king to justice. But in a letter of Baillie to Alexander Henderson, May 19. 1646, he says, "If God have hardened him, so far as I can perceive, this people will strive to have him in their power, and make an example of him; *I abhor to think what they speak of execution!*" ii. 20.: published also in Dalrymple's Memorials of Charles I., p. 166. Proofs may also be brought from pamphlets by Lilburne and others in 1647, especially towards the end of that year: and the remonstrance of the Scots parliament, dated Aug. 13., alludes to such language. Rush. vi. 245.

the righteousness of their actions, to think of private assassination, they sought to gratify their pride by the solemnity and notoriousness, by the very infamy and eventual danger, of an act unprecedented in the history of nations. Throughout the year 1648, this design, though suspended, became familiar to the people's expectation.[1] The commonwealth's men and the levellers, the various sectaries (admitting a few exceptions) grew clamorous for the king's death. Petitions were presented to the commons, praying for justice on all deliquents, from the highest to the lowest.[2] And not long afterwards the general officers of the army came forward with a long remonstrance against any treaty, and insisting that the capital and grand author of their troubles be speedily brought to justice, for the treason, blood, and mischief, whereof he had been guilty.[3] This was soon followed by a vote of the presbyterian party, that the answers of the king to the propositions of both houses are a ground for the house to proceed upon for the settlement of the peace of the kingdom,[4] by the violent expulsion, or, as it was called, seclusion of all the presbyterian members from the house, and the ordinance of a wretched minority, commonly called the Rump, constituting the high court of justice for the trial of the king.[5]

A very small number among those who sat in this strange tribunal upon Charles the First were undoubtedly capable of taking statesman-like views of the interests of their party, and might consider his death a politic expedient for consolidating the new settlement. It seemed to involve the army, which had openly abetted the act, and even the nation by its passive consent, in such inexpiable guilt towards the royal family, that neither common prudence nor a sense of shame would permit them to suffer its restoration. But by the far greater part of the regicides such considerations were either overlooked or kept in the background. Their more powerful motive was that fierce fanatical hatred of the king, the natural fruit of long civil dissension, inflamed by preachers

Berkley indeed positively assures us, that the resolution was taken at Windsor in a council of officers, soon after the king's confinement at Carisbrook; and this with so much particularity of circumstance that, if we reject his account, we must set aside the whole of his memoirs at the same time. Maseres's Tracts, i. 383. But it is fully confirmed by an independent testimony, William Allen, himself one of the council of officers and adjutant-general of the army, who, in a letter addressed to Fleetwood, and published in 1659, declares that after much consultation and prayer at Windsor Castle, in the beginning of 1648, they had "come to a very clear and joint resolution that it was their duty to call Charles Stuart, that man of blood, to an account for the blood he had shed, and mischief he had done to his utmost, against the Lord's cause and people in these poor nations." This is to be found in Somers Tracts, vi. 499. The only discrepancy, if it is one, between him and Berkley, is as to the precise time, which the other seems to place in the end of 1647. But this might be lapse of memory in either party; nor is it clear, on looking attentively at Berkley's narration, that he determines the time. Ashburnham says, "For some days before the king's remove from Hampton Court, there was scarcely a day in which several alarms were not brought him by and from several considerable persons, both well affected to him and likely to know much of what was then in agitation, of the resolution which a olent party in the army had to take away his life. And that such a design there was, there were strong insinuations to persuade."

[1] Somers Tracts, v. 160. 162.

[2] Sept. 11. Parl. Hist. 1077. May's Breviate in Maseres's Tracts, vol. i. p. 127. Whitelock, 335.

[3] Nov. 17. Parl. Hist. 1077. Whitelock. p. 355. A motion, Nov. 30., that the house do now proceed on the remonstrance of the army, was lost by 125 to 58, (printed 53. in Parl. Hist.). Commons' Journals. So weak was still the republican party. It is indeed remarkable that this remonstrance itself is rather against the king, than absolutely against all monarchy; for one of the proposals contained in it is that kings should be chosen by the people, and have no negative voice.

[4] The division was on the previous question, which was lost by 129 to 83.

[5] No division took place on any of the votes respecting the king's trial.

more dark and sanguinary than those they addressed, and by a perverted study of the Jewish scriptures. They had been wrought to believe, not that his execution would be justified by state-necessity, or any such feeble grounds of human reasoning, but that it was a bounden duty, which with a safe conscience they could not neglect. Such was the persuasion of Ludlow and Hutchinson, the most respectable names among the regicides; both of them free from all suspicion of interestedness or hypocrisy, and less intoxicated than the rest by fanaticism. "I was fully persuaded," says the former, "that an accommodation with the king was unsafe to the people of England, and unjust and wicked in the nature of it. The former, besides that it was obvious to all men, the king himself had proved, by the duplicity of his dealing with the parliament, which manifestly appeared in his own papers, taken at the battle of Naseby and elsewhere. Of the latter I was convinced by the express words of God's law; 'that blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.' (Numbers, c. xxxv. v. 33.) And therefore I could not consent to leave the guilt of so much blood on the nation, and thereby to draw down the just vengeance of God upon us all, when it was most evident that the war had been occasioned by the invasion of our rights, and open breach of our laws and constitution on the king's part." (Ludlow, i. 267.) "As for Mr. Hutchinson," says his high-souled consort, "although he was very much confirmed in his judgment concerning the cause, yet being here called to an extraordinary action, whereof many were of several minds, he addressed himself to God by prayer, desiring the Lord, that, if through any human frailty, he were led into any error or false opinion in those great transactions, he would open his eyes, and not suffer him to proceed, but that he would confirm his spirit in the truth, and lead him by a right-enlightened conscience; and finding no check, but a confirmation in his conscience, that it was his duty to act as he did, he, upon serious debate, both privately and in his addresses to God, and in conferences with conscientious, upright, unbiased persons, proceeded to sign the sentence against the king. Although he did not then believe but it might one day come to be again disputed among men, yet both he and others thought they could not refuse it without giving up the people of God, whom they had led forth and engaged themselves unto by the oath of God, into the hands of God's and their enemies; and therefore he cast himself upon God's protection, acting according to the dictates of a conscience which he had sought the Lord to guide; and accordingly the Lord did signalise his favour afterward to him." (Hutchinson, p. 303.)

The execution of Charles the First has been mentioned in later ages by a few with unlimited praise, by some with faint and ambiguous censure, by most with vehement reprobation. My own judgment will possibly be anticipated by the reader of the preceding pages. I shall certainly not rest it on the imaginary sacredness and divine origin of royalty, nor even on the irresponsibility with which the law of almost every country invests the person of its sovereign. Far be it from me to contend, that no cases may be conceived, that no instances may be found in history, wherein the sympathy of mankind and the sound

principles of political justice would approve a public judicial sentence as the due reward of tyranny and perfidiousness. But we may confidently deny that Charles the First was thus to be singled out as a warning to tyrants. His offences were not, in the worst interpretation, of that atrocious character which calls down the vengeance of insulted humanity, regardless of positive law. His government had been very arbitrary; but it may well be doubted whether any, even of his ministers, could have suffered death for their share in it, without introducing a principle of barbarous vindictiveness. Far from the sanguinary misanthropy of some monarchs, or the revengeful fury of others, he had in no instance displayed, nor does the minutest scrutiny since made into his character entitle us to suppose any malevolent dispositions beyond some proneness to anger, and a considerable degree of harshness in his demeanour.[1] As for the charge of having caused the bloodshed of the war, upon which, and not on any former misgovernment his condemnation was grounded, it was as ill established, as it would have been insufficient. Well might the earl of Northumberland say, when the ordinance for the king's trial was before the lords, that the greatest part of the people of England were not yet satisfied whether the king levied war first against the houses, or the houses against him.[2] The fact, in my opinion, was entirely otherwise. It is quite another question whether the parliament were justified in their resistance to the king's legal authority. But we may contend that when Hotham, by their command, shuts the gates of Hull against his sovereign, when the militia was called out in different counties by an ordinance of the two houses, both of which preceded by several weeks any levying of forces for the king, the bonds of our constitutional law were by them and their servants snapped asunder; and it would be the mere pedantry and chicane of political casuistry to inquire, even if the fact could be better ascertained, whether at Edgehill, or in the minor skirmishes that preceded, the first carbine was discharged by a cavalier or a roundhead. The aggressor in a war is not the first who uses force, but the first who renders force necessary.

But, whether we may think this war to have originated in the king's or the parliament's aggression, it is still evident that the former had a

[1] The king's manners were not good. He spoke and behaved to ladies with indelicacy in public. Warburton's Notes on Clarendon, vii. 629., and a passage in Milton's Defensio pro Populo Anglicano, quoted by Harris and Brodie. He once forgot himself so far as to cane sir Henry Vane for coming into a room of the palace reserved for persons of higher rank. Carte's Ormond, i. 356., where other instances are mentioned by that friendly writer. He had in truth none who loved him, till his misfortunes softened his temper, and excited sympathy.

An anecdote, strongly intimating the violence of Charles's temper, has been rejected by his advocates. It is said that Burnet, in searching the Hamilton papers, found that the king, on discovering the celebrated letter of the Scots covenanting lords to the king of France, was so incensed that he sent an order to sir William Balfour, lieutenant-governor of the Tower, to cut off the head of his prisoner, lord Loudon; but that the marquis of Hamilton, to whom Balfour immediately communicated this, urged so strongly on the king that the city would be up in arms on this violence, that with reluctance he withdrew the warrant. This story is told by Oldmixon, Hist. of the Stuarts. p. 140. It was brought forward on Burnet's authority, and also on that of the duke of Hamilton, killed in 1712, by Dr. Birch, no incompetent judge of historical evidence: it seems confirmed by an intimation given by Burnet himself in his Memoirs of the Duke of Hamilton, p. 161. It is said by Laing, iii. 189, to be also mentioned by Scott of Scotstarvet, a contemporary writer. Harris, p. 350., quotes other authorities, earlier than the anecdote told of Burnet; and upon the whole, I think the story deserving credit, and by no means so much to be slighted as the Oxford editor of Burnet has thought fit to do

[2] Clement Walker, Hist. of Independency, Part II. p. 55.

fair case with the nation, a cause which it was no plain violation of justice to defend. He was supported by the greater part of the peers, by full one third of the commons, by the principal body of the gentry, and a large proportion of other classes. If his adherents did not form, as I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal law. Hence if Charles, after having by a course of victories, or the defection of the people, prostrated all opposition, had abused his triumph by the execution of Essex or Hampden, Fairfax or Cromwell, I think that later ages would have disapproved of their deaths as positively, though not quite as vehemently, as they have of his own. The line is not easily drawn, in abstract reasoning, between the treason which is justly punished, and the social schism which is beyond the proper boundaries of law; but the civil war of England seems plainly to fall within the latter description. These objections strike me as unanswerable, even if the trial of Charles had been sanctioned by the voice of the nation through its legitimate representatives, or at least such a fair and full convention, as might, in great necessity, supply the place of lawful authority. But it was, as we all know, the act of a bold but very small minority, who having forcibly expelled their colleagues from parliament, had usurped, under the protection of a military force, that power which all England reckoned illegal. I cannot perceive what there was in the imagined solemnity of this proceeding, in that insolent mockery of the forms of justice, accompanied by all unfairness and inhumanity in its circumstances, which can alleviate the guilt of the transaction; and if it be alleged that many of the regicides were firmly persuaded in their consciences of the right and duty of condemning the king, we may surely remember that private murderers have often had the same apology.

In discussing each particular transaction in the life of Charles, as of any other sovereign, it is required by the truth of history to spare no just animadversion upon his faults; especially where much art has been employed by the writers most in repute to carry the stream of public prejudice in an opposite direction. But when we come to a general estimate of his character, we should act unfairly not to give their full weight to those peculiar circumstances of his condition in this worldly scene, which tend to account for and extenuate his failings. The station of kings is, in a moral sense, so unfavourable, that those who are least prone to servile admiration should be on their guard against the opposite error of an uncandid severity. There seems no fairer method of estimating the intrinsic worth of a sovereign, than to treat him as a subject, and to judge, so far as the history of his life enables us, what he would have been in that more private and happier condition, from which the chance of birth has excluded him. Tried by this test, we cannot doubt that Charles the First would have been, not altogether an amiable man, but one deserving of general esteem; his firm and conscientious virtues the same, his deviations from right far

less frequent, than upon the throne. It is to be pleaded for this prince, that his youth had breathed but the contaminated air of a profligate and servile court, that he had imbibed the lessons of arbitrary power from all who surrounded him, that he had been betrayed by a father's culpable blindness into the dangerous society of an ambitious, unprincipled favourite. To have maintained so much correctness of morality as his enemies confess, was a proof of Charles's virtuous dispositions; but his advocates are compelled also to own, that he did not escape as little injured by the poisonous adulation to which he had listened. Of a temper by nature, and by want of restraint, too passionate, though not vindictive; and, though not absolutely cruel, certainly deficient in gentleness and humanity, he was entirely unfit for the very difficult station of royalty, and especially for that of a constitutional king. It is impossible to excuse his violations of liberty on the score of ignorance, especially after the petition of right; because his impatience of opposition from his council made it unsafe to give him any advice that thwarted his determination. His other great fault was want of sincerity—a fault that appeared in all parts of his life, and from which no one who has paid the subject any attention will pretend to exculpate him. Those indeed who know nothing but what they find in Hume may believe, on Hume's authority, that the king's contemporaries never dreamed of imputing to him any deviation from good faith; as if the whole conduct of the parliament had not been evidently founded upon a distrust, which on many occasions they very explicitly declared. But, so far as this insincerity was shown in the course of his troubles, it was a failing which untoward circumstances are apt to produce, and which the extreme hypocrisy of many among his adversaries might sometimes palliate. Few personages in history, we should recollect, have had so much of their actions revealed, and commented upon, as Charles; it is perhaps a mortifying truth that those who have stood highest with posterity, have seldom been those who have been most accurately known.

The turn of his mind was rather peculiar, and laid him open with some justice to very opposite censures—for an extreme obstinacy in retaining his opinion, and for an excessive facility in adopting that of others. But the apparent incongruity ceases when we observe that he was tenacious of ends, and irresolute as to means; better fitted to reason than to act; never swerving from a few main principles, but diffident of his own judgment in its application to the course of affairs. His chief talent was an acuteness in dispute; a talent not usually much exercised by kings, but which the strange events of his life called into action. He had, unfortunately for himself, gone into the study most fashionable in that age, of polemical theology; and, though not at all learned, had read enough of the English divines to maintain their side of the current controversies with much dexterity. But this unkingly talent was a poor compensation for the continual mistakes of his judgment in the art of government, and the conduct of his affairs.[1]

[1] Clarendon, Collier, and the high-church writers in general, are very proud of the superiority they fancy the king to have obtained in a long argumentation held at Newcastle with Henderson, a Scots minister, on church authority and government. This was conducted in writing, and the papers afterwards published. They may be read in the King's Works, and in

It seems natural not to leave untouched in this place the famous problem of the Icon Basiliké, which has been deemed an irrefragable evidence both of the virtues and the talents of Charles. But the authenticity of this work can hardly be any longer a question among judicious men. We have letters from Gauden and his family, asserting it as his own in the most express terms, and making it the ground of a claim for reward. We know that the king's sons were both convinced that it was not their father's composition, and that Clarendon was satisfied of the same. If Gauden not only set up a false claim to so famous a work, but persuaded those nearest to the king to surrender that precious record, as it had been reckoned, of his dying sentiments, it was an instance of successful impudence which has hardly a parallel. But I should be content to rest the case on that internal evidence, which has been so often alleged for its authenticity. The Icon has to my judgment all the air of a fictitious composition. Cold, stiff, elaborate, without a single allusion that bespeaks the superior knowledge of facts which the king must have possessed, it contains little but those rhetorical common-places which would suggest themselves to any forger. The prejudices of party, which exercise a strange influence in matters of taste, have caused this book to be extravagantly praised. It has doubtless a certain air of grave dignity, and the periods are more artificially constructed than was usual in that age (a circumstance not in favour of its authenticity); but the style is encumbered with frigid metaphors, as is said to be the case in Gauden's acknowledged writings; and the thoughts are neither beautiful, nor always exempt from affectation. The king's letters during his imprisonment, preserved in the Clarendon State Papers, and especially one to his son, from which an extract is given in the History of the Rebellion, are more satisfactory proofs of his integrity than the laboured self-panegyrics of the Icon Basiliké.

PART II.

THE death of Charles the First was pressed forward rather through personal hatred and superstition, than out of any notion of its necessity to secure a republican administration. That party was still so weak, that the commons came more slowly, and with more difference of judgment than might be expected, to an absolute renunciation of monarchy. They voted indeed that the people are, under God, the original of all just power; and that whatever is enacted by the commons in parliament hath the force of law, although the consent and concurrence of the king or house of peers be not had thereto; terms manifestly not exclusive of the nominal continuance of the two latter. They altered the public style from the king's name to that of the parliament, and gave other indications of their intentions; but the vote for the abolition

Collier, p. 842. It is more than insinuated that Henderson died of mortification at his defeat. He certainly had not the excuse of the philosopher, who said he had no shame in yielding to the master of fifty legions. But those who take the trouble to read these papers will probably not think one party so much the stronger as to shorten the other's days. They show that Charles held those extravagant tenets about the authority of the church and of the fathers, which are irreconcilable with protestantism, in any country where it is not established, and are likely to drive it out where it is so.

of monarchy did not pass till the 7th of February, after a debate, according to Whitelock, but without a division. None of that clamorous fanaticism showed itself, which, within our memory, produced, from a far more numerous assembly, an instantaneous decision against monarchy. Wise men might easily perceive that the regal power was only suspended through the force of circumstances, not abrogated by any real change in public opinion.

The house of lords, still less able than the crown to withstand the inroads of democracy, fell by a vote of the commons at the same time. It had continued during the whole progress of the war to keep up as much dignity as the state of affairs would permit; tenacious of small privileges, and offering much temporary opposition in higher matters, though always receding in the end from a contention wherein it could not be successful. The commons, in return, gave them respectful language, and discountenanced the rude innovators who talked against the rights of the peerage. They voted, on occasion of some rumours, that they held themselves obliged, by the fundamental laws of the kingdom and their covenant, to preserve the peerage with the rights and privileges belonging to the house of peers, equally with their own.[1] Yet this was with a secret reserve that the lords should be of the same mind as themselves. For the upper house having resented some words dropped from sir John Evelyn at a conference concerning the removal of the king to Warwick Castle, importing that the commons might be compelled to act without them, the commons vindicating their member as if his words did not bear that interpretation, yet added, in the same breath, a plain hint that it was not beyond their own views of what might be done; "hoping that their lordships did not intend by their inference upon the words, even in the sense they took the same, so to bind up this house to one way of proceeding, as that in no case whatsoever, though never so extraordinary, though never so much importing the honour and interest of the kingdom, the commons of England might not do their duty, for the good and safety of the kingdom, in such a way as they may, if they cannot do it in such a way as they would and most desire."[2]

After the violent seclusion of the constitutional party from the house of commons, on the 6th Dec. 1648, very few, not generally more than five, peers continued to meet. Their number was suddenly increased to twelve on the 2nd of Jan.; when the vote of the commons, that it is high treason in the king of England, for the time being, to levy war against parliament, and the ordinance constituting the high court of justice, were sent up for their concurrence. These were unanimously rejected with more spirit than some, at least, of their number might be expected to display. Yet as if apprehensive of giving too much umbrage, they voted at their next meeting to prepare an ordinance, making it treasonable for any future king of England to levy war against the parliament—a measure quite as unconstitutional as that they had rejected. They continued to linger on the verge of annihila-

[1] Parl. Hist. 349. The council of war more than once, in the year 1647, declared their intention of preserving the rights of the peerage. Whitelock, 288., and sir William Waller's Vindication, 192.

[2] Commons' Journal, 13th and 19th May, 1646.

tion during the month, making petty orders about writs of error, from four to six being present: they even met on the 30th of January. On the 1st of Feb., six peers forming the house, it was moved, "that they would take into consideration the settlement of the government of England and Ireland, in this present conjecture of things upon the death of the king;" and ordered that these lords following (naming those present and three more) be appointed to join with a proportionable number of the house of commons for that purpose. Soon after the speaker acquainted the house, that he had that morning received a letter from the earl of Northumberland, with a paper enclosed, of very great concernment; and for the present the house ordered that it should be sealed up with the speaker's seal. This probably related to the impending dissolution of their house; for they found next day that their messengers sent to the commons had not been admitted. They persisted, however, in meeting till the 6th, when they made a trifling order, and adjourned "till ten o'clock to-morrow." (Lords' Journals.) That morrow was the twenty-fifth of April 1660. For the commons having the same day rejected, by a majority of forty-four to twenty-nine, a motion that they would take the advice of the house of lords in the exercise of the legislative power, resolved that the house of peers was useless and dangerous, and ought to be abolished.[1] It should be noticed that there was no intention of taking away the dignity of peerage: the lords, throughout the whole duration of the commonwealth, retained their titles, not only in common usage, but in all legal and parliamentary documents. The earl of Pembroke, basest among the base, condescended to sit in the house of commons as knight for the county of Berks; and was received, notwithstanding his proverbial meanness and stupidity, with such excessive honour as displayed the character of those low-minded upstarts, who formed a sufficiently numerous portion of the house to give their tone to its proceedings.[2]

Thus by military force, with the approbation of an inconceivably small proportion of the people, the king was put to death, the ancient fundamental laws were overthrown, and a mutilated house of commons, wherein very seldom more than seventy or eighty sat, was invested with the supreme authority. So little countenance had these late proceedings even from those who seemed of the ruling faction, that when the executive council of state, consisting of forty-one, had been nominated, and a test was proposed to them, declaring their approbation of all that had been done about the king and the kingly office, and about the house of lords, only nineteen would subscribe it, though there were fourteen regicides on the list.[3] It was agreed at length,

[1] Commons' Journals. It had been proposed to continue the house of lords as a court of judicature, or as a court of consultation, or in some way or other to keep it up. The majority, it will be observed, was not very great; so far was the democratic scheme from being universal even within the house. Whitelock, 377. Two divisions had already taken place; one on Jan. 9., when it was carried by thirty-one to eighteen, that "a message from the lords should be received;" Cromwell strongly supporting the motion, and being a teller for it; and again on Jan. 18., when, the opposite party prevailing, it was negatived by twenty-five to eighteen, to ask their assent to the vote of the 4th instant, that the sovereignty resides in the commons; which, doubtless, if true, could not require the lords' concurrence.

[2] Whitelock, 396. They voted that Pembroke, as well as Salisbury and Howard of Escrick, who followed the ignominious example, should be added to all committees.

[3] Commons' Journals. Whitelock. It had been referred to a committee of five members, Lisle, Holland, Robinson, Scot, and Ludlow, to recommend thirty-five for a council of state;

that they should subscribe it only as to the future proceedings of the commons. With such dissatisfaction at head-quarters, there was little to hope from the body of the nation.[1] Hence when an engagement was tendered to all civil officers and beneficed clergy, containing only a promise to live faithful to the commonwealth, as it was established without a king or house of lords, (though the slightest test of allegiance that any government could require), it was taken with infinite reluctance, and, in fact, refused by very many; the presbyterian ministers especially showing a determined averseness to the new republican organisation.[2]

This however was established, (such is the dominion of the sword), far beyond the control of any national sentiment. Thirty thousand veteran soldiers guaranteed the mock parliament they had permitted to reign. The sectaries, a numerous body, and still more active than numerous, possessed, under the name of committees for various purposes appointed by the house of commons, the principal local authorities, and restrained by a vigilant scrutiny the murmurs of a disaffected majority. Love, an eminent presbyterian minister, lost his head for a conspiracy, by the sentence of a high court of justice, a tribunal that superseded trial by jury.[3] His death struck horror and consternation into that arrogant priesthood, who had begun to fancy themselves almost beyond the scope of criminal law. The cavaliers were prostrate in the dust; and anxious to retrieve something from the wreck of their long sequestered estates, had generally little appetite to embark afresh in a hopeless cause; besides that the mutual animosities between their party and the presbyterians were still too irreconcilable to admit of any sincere co-operation. Hence neither made any considerable effort in behalf of Charles on his march, or rather flight, into England; a measure, indeed, too palpably desperate for prudent men who had learned the strength of their adversaries; and the great victory of Worcester consummated the triumph of the infant commonwealth, or rather of its future master.

A train of favouring events, more than any deep-laid policy, had now brought sovereignty within the reach of Cromwell. His first schemes of ambition may probably have extended no farther than a title and estate, with a great civil and military command in the king's name. Power had fallen into his hands because they alone were fit to wield it; he was taught by every succeeding event his own undeniable

to whose nominations the house agreed, and added their own. Ludlow, i. 288. They were appointed for a year; but in 1650 the house only left out two of the former list, besides those who were dead. Whitelock, 441. In 1651 the change was more considerable. Id. 488.

[1] Six judges agreed to hold on their commissions; six refused. Whitelock, who makes a poor figure at this time on his own showing, consented to act still as commissioner of the great seal. Those who remained in office affected to stipulate that the fundamental laws should not be abolished; and the house passed a vote to this effect. Whitelock, 378.

[2] Whitelock, 444. et alibi. Baxter's Life, 64. A committee was appointed April, 1649, to inquire about ministers who asperse the proceedings of parliament in their pulpits. Whitelock, 395.

[3] State Trials, v. 43. Baxter says that Love's death hurt the new commonwealth more than would be easily believed, and made it odious to all the religious party in the land, except the sectaries. Life of B. 67. But "oderint dum metuant" is the device of those who rule in revolutions. Clarendon speaks, on the contrary, of Love's execution triumphantly. He had been distinguished by a violent sermon during the treaty of Uxbridge, for which the parliament, on the complaint of the king's commissioners, put him in confinement, Thurloe, i. 65. State Trials, 201.; though the noble historian, as usual, represents this otherwise. He also misstates Love's dying speech.

superiority over his contemporaries in martial renown, in civil prudence, in decision of character, and in the public esteem which naturally attached to these qualities. Perhaps it was not till after the battle of Worcester that he begun to fix his thoughts, if not on the dignity of royalty, yet on an equivalent right of command. Two remarkable conversations, in which Whitelock bore a part, seem to place beyond controversy the nature of his designs. About the end of 1651, Whitelock himself, St. John, Widdrington, Lenthall, Harrison, Desborough, Fleetwood, and Whalley, met Cromwell, at his own request, to consider the settlement of the nation. The four former were in favour of monarchy, Whitelock inclining to Charles, Widdrington and others to the duke of Glocester; Desborough and Whalley were against a single person's government, and Fleetwood uncertain. Cromwell, who had evidently procured this conference in order to sift the inclinations of so many leading men, and to give some intimation of his own, broke it up with remarking, that if it might be done with safety and preservation of their rights as Englishmen and Christians, a settlement of somewhat with monarchical power in it would be very effectual. (Whitelock, 516.) The observation he here made of a disposition among the lawyers to elect the duke of Glocester, as being exempt by his youth from the prepossessions of the two elder brothers, may, perhaps, have put Cromwell on releasing him from confinement, and sending him to join his family beyond sea.[1]

Twelve months after this time, in a more confidential discourse with Whitelock alone, the general took occasion to complain both of the chief officers of the army, and of the parliament; the first as inclined to factious murmurings, and the second, as engrossing all offices to themselves, divided into parties, delaying business, guilty of gross injustice and partiality, and designing to perpetuate their own authority. Whitelock confessing part of this, urged that having taken commissions from them as the supreme power, it would be difficult to find means to restrain them. "What," said Cromwell, "if a man should take upon him to be king?" "I think," answered Whitelock, "that remedy would be worse than the disease." "Why," rejoined the other, "do you think so?" He then pointed out that the statute of Henry VII. gave security to those who acted under a king, which no other government could furnish; and that the reverence paid by the people to that title would serve to curb the extravagancies of those now in power. Whitelock replied that their friends having engaged in a persuasion, though erroneous, that their rights and liberties would be better preserved under a commonwealth than a monarchy, this state of the question would be wholly changed by Cromwell's assumption of

[1] The parliament had resolved, 24th July, 1650, that Henry Stuart, son of the late king, and the lady Elizabeth, daughter of the late king, be removed forthwith beyond the seas, out of the limits of this commonwealth. Yet this intention seems to have been soon changed; for it is resolved, Sept. 11., to give the duke of Glocester 1500*l.* per annum for his maintenance, so long as he should behave himself inoffensively. Whether this proceeded from liberality, or from a vague idea that they might one day make use of him, is hard to say. Clarendon mentions the scheme of making the duke of Glocester king, in one of his letters (iii. 38. 11th Nov. 1651): but says, "Truly I do believe that Cromwell might as easily procure himself to be chosen king as the duke of Glocester; for as none of the king's party would assist the last, so I am persuaded both presbyterians and independents would have much sooner the former than any of the race of him whom they have murthered."

the title, and it would become a private controversy between his family and that of the Stuarts. Finally, on the other's encouragement to speak fully his thoughts, he told him "that no expedient seemed so desirable as a private treaty with the king, in which he might not only provide for the security of his friends, and the greatness of his family, but set limits to monarchical power, keeping the command of the militia in his own hands." Cromwell merely said, "that such a step would require great consideration;" but broke off with marks of displeasure, and consulted Whitelock much less for some years afterwards.[1]

These projects of usurpation could not deceive the watchfulness of those whom Cromwell pretended to serve. He had on several occasions thrown off enough of his habitual dissimulation to show the commonwealth's men that he was theirs only by accident, with none of their fondness for republican polity. The parliament in its present wreck contained few leaders of superior ability; but a natural instinct would dictate to such an assembly the distrust of a popular general, even if there had been less to alarm them in his behaviour.[2] They had not means, however to withstand him. The creatures themselves of military force, their pretensions to direct or control the army could only move scorn or resentment. Their claim to a legal authority, and to the name of representatives of a people who rejected and abhorred them, was perfectly impudent. When the house was fullest, their numbers did not much exceed one hundred; but the ordinary divisions, even on subjects of the highest moment, show an attendance of but fifty or sixty members. They had retained in their hands, notwithstanding the appointment of a council of state, most of whom were from their own body, a great part of the executive government, especially the disposal of offices. (Journals, passim.) These they largely shared among themselves or their dependents; and in many of their votes gave occasion to such charges of injustice and partiality, as, whether true or false, will attach to a body of men so obviously self-interested.[3] It

[1] Whitelock p. 548. Lord Orrery told Burnet that he had once mentioned to Cromwell a report that he was to bring in the king who should marry his daughter, and observed, that he saw no better expedient. Cromwell, without expressing any displeasure, said, "the king cannot forgive his father's blood;" which the other attempted to answer. Burnet, i. 95. It is certain, however, that such a compromise would have been dishonourable for one party, and infamous for the other.

[2] Cromwell, in his letter to the parliament, after the battle of Worcester, called it a *crowning mercy*. This, though a very intelligible expression, was taken in an invidious sense by the republicans.

[3] One of their most scandalous acts was the sale of the earl of Craven's estate. He had been out of England during the war, and could not therefore be reckoned a delinquent. But evidence was offered that he had seen the king in Holland; and upon this charge, though he petitioned to be heard, and, as is said, indicted the informer for perjury, whereof he was convicted, they voted by 33 to 31 that his lands should be sold; Haslerig, the most savage zealot of the whole faction, being a teller for the ayes, Vane for the noes. Journals, 6th Mar., 1651, and 22nd June, 1652. State Trials, v. 323. On the 20th of July in the same year, it was referred to a committee, to select thirty delinquents, whose estates should be sold for the use of the navy. Thus, long after the cessation of hostility, the royalists continued to stand in jeopardy, not only collectively but personally, from this arbitrary and vindictive faction. Nor were these qualities displayed against the royalists alone: one Josiah Primatt, who seems to have been connected with Lilburne, Wildman, and the levellers, having presented a petition complaining that sir Arthur Haslerig had violently dispossessed him of some collieries, the house after voting every part of the petition to be false, adjudged him to pay a fine of 3000*l.* to the commonwealth, 2000*l.* to Haslerig, and 2000*l.* more to the commissioners for compositions. Journals, 15th Jan. 1651–2. There had been a project of erecting a university at

seems to be a pretty general opinion that a popular assembly is still more frequently influenced by corrupt and dishonest motives in the distribution of favours, or the decision of private affairs, than a ministry of state; whether it be that it is more probable that a man of disinterestedness and integrity may in the course of events rise to the conduct of government, than that such virtues should belong to a majority; or that the clandestine management of court corruption renders it less scandalous and more easily varnished, than the shamelessness of parliamentary iniquity.

The republican interest in the nation was almost wholly composed of two parties, both off-shoots deriving strength from the great stock of the army; the levellers, of whom Lilburne and Wildman are the most known, and the anabaptists, fifth monarchy-men, and other fanatical sectaries, headed by Harrison, Hewson, Overton, and a great number of officers. Though the sectaries seemed to build their revolutionary schemes more on their own religious views than the levellers, they coincided in most of their objects and demands.[1] An equal representation of the people in short parliaments, an extensive alteration of the common law, the abolition of tithes, and indeed of all regular stipends to the ministry, a full toleration of religious worship, were reformations which they concurred to require, as the only substantial fruits of their arduous struggle.[2] Some among the wilder sects dreamed of overthrowing all civil institutions. These factions were not without friends in the commons. But the greater part were not inclined to gratify them, by taking away the provision of the church, and much less to divest themselves of their own authority. They voted indeed that tithes should cease as soon as a competent maintenance should be otherwise provided for the clergy.[3] They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay.[4] They pro-

Durham, in favour of which a committee reported (18th June, 1651), and for which the chapter lands would have made a competent endowment. Haslerig, however, got most of them into his own hands; and thus frustrated, perhaps, a design of great importance to education and literature in this country. For had an university once been established, it is just possible, though not very likely, that the estates would not have reverted, on the king's restoration, to their former, but much less useful possessors.

[1] Mrs. Hutchinson speaks very favourably of the levellers, as they appeared about 1647, declaring against the factions of the presbyterians and independents, and the ambitious views of their leaders, and especially against the unreasonable privileges claimed by the houses of parliament collectively and personally. "Indeed, as all virtues are mediums and have their extremes, there rose up after in that house a people who endeavoured the levelling of all estates and qualities, which those sober levellers were never guilty of desiring; but were men of just and sober principles, of honest and religious ends, and were therefore hated by all the designing self-interested men of both factions. Colonel Hutchinson had a great intimacy with many of these; and so far as they acted according to the just, pious, and public spirit which they professed, owned them and protected them as far as he had power. These were they who first began to discover the ambition of Lieut.-Gen. Cromwell and his idolaters, and to suspect and dislike it." P. 285.

[2] Whitelock, 399. 401. The levellers rose in arms at Banbury and other places, but were soon put down, chiefly through the energy of Cromwell, and their ringleaders shot.

[3] It was referred to a committee, 29th April, 1652, to consider how a convenient and competent maintenance for a godly and able ministry may be settled, in lieu of tithes. A proposed addition, that tithes be paid till such maintenance be settled, was carried by 27 to 17.

[4] Journals, 19th Jan, 1652. Hale was the first named on this commission, and took an

ceeded rather slowly and reluctantly to frame a scheme for future parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterwards carried into effect by Cromwell.[1] It was with much delay and difficulty, amidst the loud murmurs of their adherents, that they could be brought to any vote in regard to their own dissolution. It passed on Nov. 17. 1651, after some very close divisions, that they should cease to exist as a parliament on Nov. 3. 1654.[2] The republicans out of doors, who deemed annual, or at least biennial parliaments essential to their definition of liberty, were indignant at so unreasonable a prolongation. Thus they forfeited the good-will of the only party on whom they could have relied. Cromwell dexterously aggravated their faults; he complained of their delaying the settlement of the nation; he persuaded the fanatics of his concurrence in their own schemes; the parliament, in turn, conspired against his power, and, as the conspiracies of so many can never be secret, let it be seen that one or other must be destroyed; thus giving his forcible expulsion of them the pretext of self-defence. They fell with no regret, or rather with much joy of the nation, except a few who dreaded more from the alternative of military usurpation or anarchy, than from an assembly which still retained the names and forms so precious in the eyes of those who adhere to the ancient institutions of their country.[3]

It was now the deep policy of Cromwell to render himself the sole refuge of those who valued the laws, or the regular ecclesiastical ministry, or their own estates, all in peril from the mad enthusiasts

active part; but he was associated with some furious levellers, Desborough, Tomlinson, and Hugh Peters, so that it is hard to know how far he concurred in the alterations suggested. Many of them, however, seem to bear marks of his hand. Whitelock, 475. 517. 519. 820. et alibi. There had been previously a committee for the same purpose in 1650. See a list of the acts prepared by them in Somers Tracts, vi. 177.; several of them are worthy of attention. Ludlow, indeed, blames the commission for slowness; but their delay seems to have been very justifiable, and their suggestions highly valuable. It even appears that they drew up a book containing a regular digest or code, which was ordered to be printed. Journ. 20th Jan. 1653.

[1] A committee was named, 15th May, 1649, to take into consideration the settling of the succession of future parliaments and regulating their elections. Nothing more appears to have been done till Oct. 11th, when the committee was ordered to meet next day, and so de die in diem, and to give an account thereof to the house on Tues. come fortnight; all that came to have voices, but the special care thereof commended to sir Henry Vane, colonel Ludlow, and Mr. Robinson. We find nothing farther till Jan. 3rd, 1650, when the committee is ordered to make its report the next Wednesday. This is done accordingly Jan. 9., when sir H. Vane reports the resolutions of the committee, one of which was, that the number in future parliaments should be 400. This was carried, after negativing the previous question in a committee of the whole house. They proceeded several days afterwards on the same business. See also Ludlow, p. 313. 435.

[2] Two divisions had taken place, Nov 14. (the first on the previous question), on a motion, that it is convenient to declare a certain time for the continuance of this parliament, 50 to 46, and 49 to 47. On the last division, Cromwell and St. John were tellers for the ayes.

[3] Whitelock was one of these: and being at that time out of Cromwell's favour, inveighs much against this destruction of the power from which he had taken his commission, p. 552. 554. St. John appears to have concurred in the measure. In fact, there had so long been an end of law, that one usurpation might seem as rightful as another. But, while any house of commons remained, there was a stock left from which the ancient constitution might possibly germinate. Mrs. Macauley, whose lamentations over the Rump did not certainly proceed from this cause, thus vents her wrath on the English nation: "An acquiescence thus universal in the insult committed on the guardians of the infant republic, and the first step towards the usurpation of Cromwell, fixes an indelible stain on the character of the English, as a people basely and incorrigibly attached to the sovereignty of individuals, and of natures too ignoble to endure an empire of equal laws." vol. v. p. 112.

who were in hopes to prevail.[1] These he had admitted into that motley convention of one hundred and twenty persons, sometimes called Barebone's parliament, but more commonly the little parliament, on whom his council of officers pretended to devolve the government, mingling them with a sufficient proportion of a superior class whom he could direct.[2] This assembly took care to avoid the censure which their predecessors had incurred, by passing a good many bills, and applying themselves with a vigorous hand to the reformation of what their party deemed the most essential grievances, those of the law and of the church. They voted the abolition of the Court of Chancery: a measure provoked by its insufferable delay, its engrossing of almost all suits, and the uncertainty of its decisions. They appointed a committee to consider of a new body of the law, without naming any lawyer upon it.[3] They nominated a set of commissioners to preside in courts of justice, among whom they with difficulty admitted two of that profession (4th Oct.); they irritated the clergy by enacting that marriages should be solemnised before justices of the peace;[4] they alarmed them still more, by manifesting a determination to take away their tithes, without security for an equivalent maintenance. (Thurloe, i. 369.; iii. 132.) Thus having united against itself these two powerful bodies, whom neither kings nor parliaments in England have in general offended with impunity, this little synod of legislators was ripe for destruction. Their last vote was to negative a report of their own committee, recommending that such as should be approved as preachers of the gospel should enjoy the maintenance already settled by law; and that the payment of tithes, as a just property, should be enforced by the magistrates. The house having by the majority of two, disagreed with this report,[5] the speaker, two days after, having secured a majority of those present, proposed the surrender of their power into

[1] Harrison, when Ludlow asked him why he had joined Cromwell to turn out the parliament, said, he thought Cromwell would own and favour a set of men who acted on higher principles than those of civil liberty; and quoted from Daniel, "that the saints shall take the kingdom and possess it." Ludlow argued against him; but what was argument to such a head? Mem. of Ludlow, p. 565. Not many months after, Cromwell sent his coadjutor to Carisbrook Castle.

[2] Hume speaks of this assembly as chiefly composed of the lowest mechanics. But this was not the case. Some persons of inferior rank there were, but a large proportion of the members were men of good family, or at least military distinction, as the list of the names in the Parliamentary History is sufficient to prove; and Whitelock remarks, "it was much wondered at by some, that these gentlemen, many of them being persons of fortune and knowledge, would at this summons, and from those hands, take upon them the supreme authority of this nation." p. 559. With respect to this, it may be observed, that those who have lived in revolutions find it almost necessary, whether their own interests or those of their country are their aim, to comply with all changes, and take a greater part in supporting them, than men of inflexible consciences can approve. No one felt this more than Whitelock; and his remark in this place is a satire upon all his conduct. He was at the moment dissatisfied, and out of Cromwell's favour, but lost no time in regaining it.

[3] Journals, Aug. 19. This was carried by 46 to 38 against Cromwell's party. Yet Cromwell, two years afterwards, published an ordinance for regulating and limiting the jurisdiction of chancery: which offended Whitelock so much, that he resigned the great seal, not having been consulted in framing the regulations. This is a rare instance in his life; and he vaunts much of his conscience accordingly, but thankfully accepted the office of commissioner of the treasury instead, p. 621. 625. He does not seem, by his own account, to have given much satisfaction to suitors in equity (p. 548.): yet the fault may have been theirs, or the system's.

[4] This had been proposed by the commission for amendment of the law appointed in the long parliament. The great number of dissenters from the established religion rendered it a very reasonable measure.

[5] Journals, 2nd and 10th Dec. 1653. Whitelock. See the sixth volume of the Somers Tracts, p. 266., for a long and rather able vindication of this parliament by one of its mem

the hands of Cromwell, who put an end to the opposition of the rest, by turning them out of doors.

" It can admit of no doubt that the despotism of a wise man is more tolerable than that of political or religious fanatics; and it rarely happens that there is any better remedy in revolutions which have given the latter an ascendant. Cromwell's assumption, therefore, of the title of Protector was a necessary and wholesome usurpation, however he may have caused the necessity; it secured the nation from the mischievous lunacy of the anabaptists, and from the more cool-blooded tyranny of that little oligarchy which arrogated to itself the name of commonwealth's men. Though a gross and glaring evidence of the omnipotence of the army, the instrument under which he took his title accorded to him no unnecessary executive authority. The sovereignty still resided in the parliament; he had no negative voice on their laws. Until the meeting of the next parliament, a power was given him of making temporary ordinances; but this was not, as Hume, on the authority of Clarendon and Warwick, has supposed, and as his conduct, if that were any proof of the law, might lead us to infer, designed to exist in future intervals of the legislature.[1] It would be scarcely worth while, however, to pay much attention to a form of government which was so little regarded, except as it marks the jealousy of royal power, which those most attached to Cromwell, and least capable of any proper notions of liberty, continued to entertain.

In the ascent of this bold usurper to greatness, he had successively employed and thrown away several of the powerful factions who distracted the nation. He had encouraged the levellers and persecuted them; he had flattered the long parliament and betrayed it; he had made use of the sectaries to crush the commonwealth; he had spurned the sectaries in his last advance to power. These, with the royalists and the presbyterians, forming in effect the whole people, though too disunited for such a coalition as must have overthrown him, were the perpetual, irreconcilable enemies of his administration. Master of his army, which he well knew how to manage, surrounded by a few deep and experienced counsellors, furnished by his spies with the completest intelligence of all designs against him, he had no great cause of alarm from open resistance. But he was bound by the instrument of government to call a parliament; and in any parliament his adversaries must be formidable. He adopted in both those which he summoned the reformed model already determined; limiting the number of representatives to 400, to be chosen partly in the counties,

bers. Ludlow also speaks pretty well of it, p. 471.; and says truly enough, that Cromwell frightened the lawyers and clergy, by showing what the parliament meant to do with them, which made them in a hurry to have it destroyed. See also Parl. Hist. 1412. 1414.

[1] See the instrument of government in Whitelock, p. 571.; or Somers Tracts, vi. 257. Ludlow says, that some of the officers opposed this; but Lambert forced it down their throats, p. 276. Cromwell made good use of this temporary power. The union of Scotland with England was by one of these ordinances, April 12. (Whitelock, 586.); and he imposed an assessment of 120,000*l.* monthly, for three months, and 90,000*l.* for the next three, instead of 70,000*l.*, which had been paid before (Id. 591.), besides many other ordinances of a legislative nature. "I am very glad," says Fleetwood (Feb. 1655, Thurloe, iii. 183.), "to hear his highness has declined the legislative power, which by the instrument of government, in my opinion, he could not exercise after this last parliament's meeting." And the parliament of 1656, at the Protector's desire, confirmed all ordinances made since the dissolution of the long parliament. Thurloe, vi. 243.

according to their wealth or supposed population, by electors possessing either freeholds, or any real or moveable property to the value of 200*l.*; partly by the more considerable boroughs, in whose various rights of election no change appears to have been made.[1] This alteration, conformable to the equalising principles of the age, did not produce so considerable a difference in the persons returned as it perhaps might at present.[2] The court-party, as those subservient to him were called, were powerful through the subjection of the electors to the army. But they were not able to exclude the presbyterian and republican interests; the latter headed by Bradshaw, Haslerig, and Scott, eager to thwart the power which they were compelled to obey.[3] Hence they began by taking into consideration the whole instrument of government; and even resolved themselves into a committee to debate its leading article, the Protector's authority. Cromwell, his supporters having lost this question on a division of 141 to 136, thought it time to interfere. He gave them to understand that the government by a single person and a parliament was a fundamental principle, not subject to their discussion; and obliged every member to a recognition of it, solemnly promising neither to attempt nor to concur in any alteration of that article.[4] The commons voted, however, that this recognition should not extend to the entire instrument, consisting of forty-two articles; and went on to discuss them with such heat and prolixity, that after five months, the limited term of their session, the Protector, having obtained the ratification of his new scheme neither so fully nor so willingly as he desired, particularly having been disappointed by the great majority of 200 to 60, which voted the protectorate to be elective, not hereditary, dissolved the parliament with no small marks of dissatisfaction.[5]

The banished king, meanwhile, began to recover a little of that political importance which the battle of Worcester had seemed almost

[1] I infer this from the report of a committee of privileges on the election for Lynn, October 20. 1656.

[2] It is remarkable that Clarendon seems to approve this model of a parliament, saying, "it was then generally looked upon as an alteration fit to be more warrantably made, and in a better time."

[3] Bourdeaux, the French ambassador, says, "some were for Bradshaw as speaker, but the Protector's party carried it for Lenthall. By this beginning one may judge what the authority of the lord protector will be in this parliament. However it was observed, that as often as he spoke in his speech of liberty or religion, the members did seem to rejoice with acclamations of joy." Thurloe, v. 588.

[4] Journals, 14th and 18th Sept. Parl. Hist. 1445. 1459. Whitelock, 605. &c. Ludlow, 409.

[5] This division is not recorded in the Journals, in consequence, I suppose, of its having been resolved in a committee of the whole house. But it is impossible to doubt the fact, which is referred to Oct. 19. by a letter of Bourdeaux, the French ambassador (Thurloe, ii. 681.), who observes, "Hereby it is easily discerned that the nation is nowise affected to his family, nor much to himself. Without doubt he will strengthen his army, and keep that in a good posture." It is also alluded to by Whitelock, 609. They resolved to keep the militia in the power of the parliament, and that the Protector's negative should extend only to such bills as might alter the instrument; and in other cases, if he did not pass bills within twenty days, they were to become laws without his consent. Journs. Nov. 10, 1654. Whitelock, 608. This was carried against the court by 109 to 85. Ludlow insinuates that this parliament did not sit out its legal term of five months; Cromwell having interpreted the months to be lunar instead of calendar. Hume has adopted this notion; but it is groundless, the month in law being always of twenty-eight days, unless the contrary be expressed. This seems however not to have been generally understood at the time; for Whitelock says, that Cromwell's dissolution of the parliament, because he found them not so pliable to his purposes as he expected, caused much discontent in them and others; but that he valued it not, esteeming himself above those things, p. 618. He gave out that the parliament were concerned in the conspiracy to bring in the king.

to extinguish. So ill supported by his English adherents on that occasion, so incapable with a better army than he had any prospect of ever raising again, to make a stand against the genius and fortune of the usurper, it was vain to expect that he could be restored by any domestic insurrection, until the disunion of the prevailing factions should offer some more favourable opportunity. But this was too distant a prospect for his court of starving followers. He had from the beginning looked around for foreign assistance. But France was distracted by her own troubles; Spain deemed it better policy to cultivate the new commonwealth; and even Holland, though engaged in a dangerous war with England, did not think it worth while to accept his offer of joining her fleet, in order to try his influence with the English seamen.[1] Totally unscrupulous as to the means by which he might reign, even at the moment that he was treating to become the covenanted king of Scotland, with every solemn renunciation of popery, Charles had recourse to a very delicate negotiation, which deserves remark, as having led, after a long course of time, but by gradual steps, to the final downfall of his family. With the advice of Ormond, and with the concurrence of Hyde, he attempted to interest the pope (Innocent X.) on his side, as the most powerful intercessor with the catholic princes of Europe.[2] For this purpose it was necessary to promise toleration at least to the catholics. The king's ambassadors to Spain in 1650, Cottington and Hyde, and other agents despatched to Rome at the same time, were empowered to offer an entire repeal of the penal laws.[3] The king himself, some time afterwards, wrote a letter to the pope, wherein he repeated this assurance. That court, however, well aware of the hereditary duplicity of the Stuarts, received his overtures with haughty contempt. The pope returned no answer to the king's letter; but one was received after many months from the general of the jesuits, requiring that Charles should declare himself a catholic, since the goods of the church could not be lavished for the support of an heretical prince. (Clarendon State Papers, iii. 181.) Even after this insolent refusal, the wretched exiles still clung, at times, to the vain hope of succour, which as protestants and Englishmen they could not honourably demand.[4] But

[1] Exiles are seldom scrupulous: we find that Charles was willing to propose to the States, in return for their acknowledging his title, "such present and lasting advantages to them by this alliance as may appear most considerable to that nation and to their posterity, and a valuable compensation for whatever present advantages the king can receive by it." Clarendon State Papers, iii. 93. These intrigues would have justly made him odious in England.

[2] Ormond wrote strongly to this effect, after the battle of Worcester, convinced that nothing but foreign assistance could restore the king. "Amongst protestants there is none that hath the power, and amongst the catholics it is visible." Carte's Letters, i. 461.

[3] Clarendon State Papers, ii. 481. et sæpe alibi. The protestant zeal of Hyde had surely deserted him; and his veracity in one letter gave way also, see vol. iii. p. 158. But the great criminality of all these negotiations lay in this, that Charles was by them soliciting such a measure of foreign aid as would make him at once the tyrant of England and the vassal of Spain; since no free parliament, however royalist, was likely to repeal all the laws against popery. "That which the king will be ready and willing to do, is to give his consent for the repeal of all the penal laws and statutes which have been made in the prejudice of catholics, and to put them into the same condition as his other subjects." Cottington to Father Bapthorpe. Id. 541. These negotiations with Rome were soon known; and a tract was published by the parliament's authority, containing the documents. Notwithstanding the delirium of the restoration, this had made an impression which was not afterwards effaced.

[4] "The pope very well knows," says Hyde to Clement, an agent at the court of Rome, 2nd April, 1656, "how far the king is from thoughts of severity against his catholic subjects; nay,

many of them remarked too clearly the conditions on which assistance might be obtained; the court of Charles, openly or in secret, began to pass over to the Catholic church; and the contagion soon spread to the highest places.

In the year 1654, the royalist intrigues in England began to grow more active and formidable through the accession of many discontented republicans.[1] Though there could be no coalition, properly speaking, between such irreconcilable factions, they came into a sort of tacit agreement, as is not unusual, to act in concert for the only purpose they entertained alike, the destruction of their common enemy. Major Wildman, a name not very familiar to the general reader, but which occurs perpetually, for almost half a century, when we look into more secret history, one of those dark and restless spirits who delight in the deep game of conspiracy against every government, seems to have been the first mover of this unnatural combination. He had been early engaged in the schemes of the levellers, and was exposed to the jealous observation of the ruling powers. It appears most probable that his views were to establish a commonwealth, and to make the royalists his dupes. In his correspondence however with Brussels, he engaged to restore the king. Both parties were to rise in arms against the new tyranny; and the nation's temper was tried by clandestine intrigues in almost every county.[2] Greater reliance however was placed on the project of assassinating Cromwell. Neither party were by any means scrupulous on this score: if we have not positive evidence of Charles's concurrence in this scheme, it would be preposterous to suppose that he would have been withheld by any moral hesitation. It is frequently mentioned without any disapprobation by Clarendon in his private letters;[3] and as the royalists certainly justified the murders of Ascham and Dorislaus, they could not in common sense or consistency have scrupled one so incomparably more capable of defence.[4] A Mr. Gerard suffered death for one of these plots to kill Cromwell; justly sentenced, though by an illegal tribunal.[5]

In the year 1655, Penruddock, a Wiltshire gentleman, with a very

that he doth desire to put them into the same condition with his other subjects, and that no man shall suffer in any consideration for being a Roman catholic." Id. 291.

[1] Clarendon's History of the Rebellion, B. 14. State Papers, iii. 265. 300., &c. Whitelock observes at this time, "Many sober and faithful patriots did begin to incline to the king's restoration;" and hints that this was his opinion, which excited Cromwell's jealousy of him, p. 620.

[2] Clarendon's Hist., vii. 129. State Papers, iii. 265., &c. These levellers were very hostile to the interference of Hyde and Ormond, judging them too inflexibly attached to the ancient constitution; but this hostility recommended them to others of the banished king's court who showed the same sentiments.

[3] P. 315. 324. 343. Thurloe, i. 360. 510. In the same volume, p. 248., we find even a declaration from the king, dated at Paris, 3rd May, 1654, offering 500*l.* per annum to any one who should kill Cromwell, and pardon to any one who should leave that party, except Bradshaw, Lenthall, and Haslerig. But this seems unlikely to be authentic: Charles would not have avowed a design of assassination so openly; and it is strange that Lenthall and Haslerig, especially the former, should be thus exempted from pardon, rather than so many regicides.

[4] See what Clarendon says of Ascham's death, State Papers, ii. 542. In another place he observes:—"It is a worse and a baser thing that any man should appear in any part beyond sea under the character of an agent from the rebels, and not have his throat cut." Id. iii. 144.

[5] State Trials, 518. Thurloe, ii. 416. Some of the malecontent commonwealth men were also eager to get rid of Cromwell by assassination; Wildman, Saxby, Titus. Syndercombe's story is well known; he was connected in the conspiracy with those already mentioned. The famous pamphlet by Titus, Killing no Murder, was printed in 1657. Clarendon State Papers, 315. 324. 343.

trifling force, entered Salisbury at the time of the assizes; and, declaring for the king, seized the judge and the sheriff.[1] This little rebellion, meeting with no resistance from the people, but a supineness equally fatal, was soon quelled. It roused Cromwell to secure himself by an unprecedented exercise of power. In possession of all the secrets of his enemies, he knew that want of concert or courage had alone prevented a general rising, towards which indeed there had been some movements in the midland counties.[2] He was aware of his own unpopularity, and the national bias towards the exiled king. Juries did not willingly convict the sharers in Penruddock's rebellion.[3] To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general as a sort of military magistrate, responsible for the subjection of his prefecture. These were eleven in number, men bitterly hostile to the royalist party, and insolent towards all civil authority.[4] They were employed to secure the payment of a tax of ten per cent., imposed by Cromwell's arbitrary will, on those who had ever sided with the king during the late wars, where their estates exceeded 100*l.* per annum. The major-generals, in their correspondence printed among Thurloe's papers, display a rapacity and oppression beyond their master's. They complain that the number of those exempted is too great; they press for harsher measures; they incline to the unfavourable construction in every doubtful case; they dwell on the growth of malignancy and the general disaffection.[5] It was not indeed likely to be mitigated by this unparalleled tyranny. All illusion was now gone as to the pretended benefits of the civil war. It had ended in a despotism, compared to which all the illegal practices of former kings, all that had cost Charles his life and crown, appeared as dust in the balance. For what was ship-money, a general burthen, by the side of the present decimation of a single class, whose offence had long been expiated by a composition and effaced by an act of indemnity? or were the excessive punish-

[1] A very reprehensible passage occurs in Clarendon's account of this transaction, vol. vii. p. 140.; where he blames and derides the insurgents for not putting chief-justice Rolle and others to death, which would have been a detestable and useless murder.

[2] Whitelock, 618, 620. Ludlow, 513. Thurloe, iii. 264., and through more than half the volume, passim. In the preceding volume we have abundant proofs how completely master Cromwell was of the royalist schemes. The "sealed knot" of the king's friends in London is mentioned as frequently as we find it in the Clarendon Papers at the same time.

[3] Thurloe, iii. 371., &c. "Penruddock and Grove," Ludlow says, "could not have been justly condemned, if they had as sure a foundation in what they declared for, as what they declared against. But certainly it can never be esteemed by a wise man to be worth the scratch of a finger to remove a single person acting by an arbitrary power, in order to set up another with the same unlimited authority." P. 518. This is a just and manly sentiment. Woe to those who do not recognise it! But is it fair to say that the royalists were contending to set up an unlimited authority?

[4] They were originally ten, Lambert, Desborough, Whalley, Goffe, Fleetwood, Skippon, Kelsey, Butler, Worseley, and Berry. Thurloe, iii. 701. Barkstead was afterwards added. "The major-generals," says Ludlow, "carried things with unheard-of insolence in their several precincts, decimating to extremity whom they pleased, and interrupting the proceedings at law upon petitions of those who pretended themselves aggrieved; threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantation in the West Indies," &c. P. 559.

[5] Thurloe, vol. iv. passim. The unpopularity of Cromwell's government appears strongly in the letters of this collection. Duckinfield, a Cheshire gentleman, writes:—"Charles Stuart hath 500 friends in these adjacent counties for every one friend to you amongst them." Volume iii. 294.

ments of the star-chamber so odious as the capital executions inflicted without trial by peers, whenever it suited the usurper to erect his high court of justice? A sense of present evils not only excited a burning desire to live again under the ancient monarchy, but obliterated, especially in the new generation that had no distinct remembrance of them, the apprehension of its former abuses.[1]

If this decimation of the royalists could pass for an act of severity towards a proscribed faction, in which the rest of the nation might fancy themselves not interested, Cromwell did not fail to show that he designed to exert an equally despotic command over every man's property. With the advice of his council, he had imposed, or as I conceive (for it is not clearly explained), continued, a duty on merchandise beyond the time limited by law. A Mr. George Cony having refused to pay this tax, it was enforced from him, on which he sued the collector. Cromwell sent his counsel, Maynard, Twisden, and Wyndham, to the Tower, who soon petitioned for liberty, and abandoned their client. Rolle, the chief-justice, when the cause came on, dared not give judgment against the protector; yet, not caring to decide in his favour, postponed the case till the next term, and meanwhile retired from the bench. Glyn, who succeeded him upon it, took care to have this business accommodated with Cony, who, at some loss of public reputation, withdrew his suit. Sir Peter Wentworth, having brought a similar action, was summoned before the council, and asked if he would give it up. "If you command me," he replied to Cromwell, "I must submit;" which the protector did, and the action was withdrawn.[2]

Though it cannot be said that such an interference with the privileges of advocates or the integrity of judges was without precedents in the times of the Stuarts, yet it had never been done in so public or shameless a manner. Several other instances wherein the usurper diverted justice from its course, or violated the known securities of Englishmen,

[1] It may be fair towards Cromwell to give his own apology for the decimation of the royalists, in a declaration, published 1655. "It is a trouble to us to be still rubbing upon the old sore, disobliging those whom we hoped time and patience might make friends; but we can with comfort appeal to God, and dare also to their own consciences, whether this way of proceeding with them hath been the matter of our choice, or that which we have sought an occasion for; or whether, contrary to our own inclinations and the constant course of our carriage towards them, which hath been to oblige them by kindness to forsake their former principles, which God hath so often and so eminently bore witness against, we have not been constrained and necessitated hereunto, and without the doing whereof we should have been wanting to our duty to God and these nations.

"That character of difference between them and the rest of the people which is now put upon them is occasioned by themselves, not by us. There is nothing they have more industriously laboured in than this; to keep themselves distinguished from the well-affected of this nation: to which end they have kept their conversation apart; as if they would avoid the very beginnings of union, have bred and educated their children by the sequestered and ejected clergy, and very much confined their marriages and alliances within their own party, as if they meant to entail their quarrel, and prevent the means to reconcile posterity; which with the great pains they take upon all occasions to lessen and suppress the esteem and honour of the English nation in all their actions and undertakings abroad, striving withal to make other nations distinguish their interest from it, gives us ground to judge that they have separated themselves from the body of the nation; and therefore we leave it to all mankind to judge whether we ought not to be timely jealous of that separation, and to proceed so against them as they may be at the charge of those remedies which are required against the dangers they have bred."

[2] Ludlow, 528. Clarendon, &c. Clarendon relates the same story with additional circumstances of Cromwell's audacious contempt for the courts of justice, and for the very name of magna charta.

will be found in most general histories; not to dwell on that most flagrant of all, the erection of his high court of justice, by which Gerard and Vowel in 1654, Slingsby and Hewit in 1658, were brought to the scaffold.[1] I cannot therefore agreee in the praises which have been showered upon Cromwell for the just administration of the laws under his dominion. That, between party and party, the ordinary civil rights of men were fairly dealt with, is no extraordinary praise; and it may be admitted that he filled the benches of justice with able lawyers, though not so considerable as those of the reign of Charles the Second: but it is manifest that, so far as his own authority was concerned, no hereditary despot, proud in the crimes of a hundred ancestors, could more have spurned at every limitation than this soldier of a commonwealth.[2]

Amidst so general a hatred, trusting to the effect of an equally general terror, the protector ventured to summon a parliament in 1656. Besides the common necessities for money, he had doubtless in his head that remarkable scheme which was developed during its session.[3] Even the despotic influence of his major-generals, and the political annihilation of the most considerable body of the gentry, then labouring under the imputation of delinquency for their attachment to the late king, did not enable him to obtain a secure majority in the assembly; and he was driven to the audacious measure of excluding above ninety members, duly returned by their constituents, from taking their seats. Their colleagues wanted courage to resist this violation of all privilege; and, after referring them to the council for approbation, resolved to proceed with public business. The excluded members, consisting partly of the republican, partly of the presbyterian factions, published a remonstrance in a very high strain, but obtained no redress.[4]

[1] State Trials, vi. Whitelock advised the protector to proceed according to law against Hewit and Slingsby: "but his highness was too much in love with the new way." P. 673.

[2] The late editor of the State Trials, v. 935., has introduced a sort of episodical dissertation on the administration of justice during the commonwealth, with the view, as far as appears, of setting Cromwell in a favourable light. For this purpose he quotes several passages of vague commendation from different authors, and among others one from Burke, written in haste to serve an immediate purpose, and evidently from a very superficial recollection of our history. It has been said that Cromwell sought out men of character from the party most opposite to his designs. The proof given is the appointment of Hale to be a puisne judge. But Hale had not been a royalist, that is, an adherent of Charles, and had taken the engagement as well as the covenant. It was no great effort of virtue to place an eminent lawyer and worthy man on the bench. And it is to be remembered that Hale fell under the usurper's displeasure for administering justice with an impartiality that did not suit his government; and ceased to go the circuit, because the criminal law was not allowed to have its course.

[3] Thurloe writes to Montague (Carte's Letters, ii. 110.) that he cannot give him the reasons for calling this parliament, except in cipher. He says in the same place of the committal of Ludlow, Vane, and others, "There was a necessity not only for peace sake to do this, but to let the nation see those that govern are in good earnest, and intend not to quit the government wholly into the hands of the parliament, as some would needs make the world believe." P. 112. His first direct allusion to the projected change is in writing to Henry Cromwell, 9th Dec. 1656. Thurl. Papers, v. 194. The influence exerted by his legates, the major-generals, appears in Thurloe, v. 299. et post. But they complained of the elections. Id. 302. 341. 371.

[4] Whitelock, 650. Parl. Hist. 1486. On a letter to the speaker from the members who had been refused admittance at the door of the lobby, Sept. 18., the house ordered the clerk of the commonwealth to attend next day with all the indentures. The deputy clerk came accordingly, with an excuse for his principal, and brought the indentures; but on being asked why the names of certain members were not returned to the house, answered, that he had no certificate of approbation for them. The house on this sent to inquire of the council why these members had not been approved. They returned for answer, that whereas it is ordained by a clause in the instrument of government that the persons who shall be elected to serve in parliament shall be such and no other than such as are persons of known integrity, fearing God,

Cromwell, like so many other usurpers, felt his position too precarious, or his vanity ungratified, without the name which mankind have agreed to worship. He had, as evidently appears from the conversations recorded by Whitelock, long since aspired to this titular, as well as to the real, pre-eminence; and the banished king's friends had contemplated the probability of his obtaining it with dismay. (Clar. State Papers, iii. 201., &c.) Affectionate towards his family, he wished to assure the stability of his son's succession, and perhaps to please the vanity of his daughters. It was indeed a very reasonable object with one who had already advanced so far. His assumption of the crown was desirable to many different classes; to the lawyers, who, besides their regard for the established constitution, knew that an ancient statute would protect those who served a de facto king in case of a restoration of the exiled family; to the nobility, who perceived that their legislative right must immediately revive; to the clergy, who judged the regular ministry more likely to be secure under a monarchy; to the people, who hoped for any settlement that would put an end to perpetual changes; to all of every rank and profession who dreaded the continuance of military despotism, and demanded only the just rights and privileges of their country. A king of England could succeed only to a bounded prerogative, and must govern by the known laws; a protector, as the nation had well felt, with less nominal authority, had all the sword could confer. And, though there might be little chance that Oliver would abate one jot of a despotism for which not the times of the Tudors could furnish a precedent, yet his life was far worn, and under a successor it was to be expected that future parliaments might assert again all those liberties for which they had contended against Charles.[1] A few of the royalists might perhaps fancy that the restoration of the royal title would lead to that of the lawful

and of good conversation; that the council, in pursuance of their duty, and according to the trust reposed in them, have examined the said returns, and have not refused to approve any who have appeared to them to be persons of integrity, fearing God, and of good conversation; and those who are not approved, his highness hath given order to some persons to take care that they do not come into the house. Upon this answer, an adjournment was proposed, but lost by 115 to 80: and it being moved that the persons who have been returned from the several counties, cities, and boroughs to serve in this parliament, and have not been approved, be referred to the council for approbation, and that the house do proceed with the great affairs of the nation; the question was carried by 125 to 29. Journ. Sept. 22.

[1] The whole conference that took place at Whitehall, between Cromwell and the committee of parliament on this subject, was published by authority, and may be read in the Somers Tracts, vi. 349. It is very interesting. The lawyers did not hesitate to support the proposition, on the ground of the more definite and legal character of a king's authority. "The king's prerogative," says Glyn, "is known by law; he (king Charles) did expatiate beyond the duty; that's the evil of the man: but in Westminster-hall the king's prerogative was under the courts of justice, and is bounded as well as any acre of land, or any thing a man hath, as much as any controversy between party and party: and therefore the office being lawful in its nature, known to the nation, certain in itself, and confined and regulated by the law, and the other office not being so, that was a great ground of the reason why the parliament did so much insist upon this office and title, not as circumstantial, but as essential." P. 359. See also what Lenthall says, p. 356., against the indefiniteness of the protector's authority.

Those passages were evidently implied censures of the late course of government. Cromwell's indistinct and evasive style in his share of this debate betrays the secret inclinations of his heart. He kept his ultimate intentions, however, very secret; for Thurloe professes his ignorance of them, even in writing to Henry Cromwell, vol. vi. p. 219. et post. This correspondence shows that the prudent secretary was uneasy at the posture of affairs, and the manifest dissatisfaction of Fleetwood and Desborough, which had a dangerous influence on others less bound to the present family; yet he had set his heart on this mode of settlement, and was much disappointed at his master's ultimate refusal.

heir; but a greater number were content to abandon a nearly desperate cause, if they could but see the more valuable object of their concern, the form itself of polity, re-established.[1] There can be, as it appears to me, little room for doubt that if Cromwell had overcome the resistance of his generals, he would have transmitted the sceptre to his descendants with the acquiescence and tacit approbation of the kingdom. Had we been living ever since under the rule of his dynasty, what tone would our historians have taken as to his character and that of the house of Stuart?

The scheme, however, of founding a new royal line failed of accomplishment, as is well known, through his own caution, which deterred him from encountering the decided opposition of his army. Some of his contemporaries seem to have deemed this abandonment, or more properly suspension, of so splendid a design rather derogatory to his firmness. (Clar. vii. 203.) But few men were better judges than Cromwell of what might be achieved by daring. It is certainly not impossible that, by arresting Lambert, Whalley, and some other generals, he might have crushed for the moment any tendency to open resistance. But the experiment would have been infinitely hazardous. He had gone too far in the path of violence to recover the high road of law by any short cut. King or protector, he must have intimidated every parliament, or sunk under its encroachments. A new-modelled army might have served his turn; but there would have been great difficulties in its formation. It had from the beginning been the misfortune of his government that it rested on a basis too narrow for its safety. For two years he had reigned with no support but the independent sectaries and the army. The army or its commanders becoming odious to the people, he had sacrificed them to the hope of popularity, by abolishing the civil prefectures of the major-generals,[2] and permitting a bill for again decimating the royalists to be thrown out of the house.[3] Their disgust and resentment, excited by an artful intriguer, who

[1] Clarendon's Hist. vii. 194. It appears by Clarendon's private letters that he had expected to see Cromwell assume the title of king from the year 1654. Vol. iii. p. 201. 223, 224. If we may trust what is here called an intercepted letter, p. 328., Mazarin had told Cromwell that France would enter into a strict league with him, if he could settle himself in the throne, and make it hereditary; to which he answered, that he designed shortly to take the crown, restore the two houses, and govern by the ancient laws. But this may be apocryphal.

[2] Ludlow, p. 581. The major-generals, or at least many of them, joined the opposition to Cromwell's royalty. Id. p. 586. Clar. State Papers, 332.

[3] This appears from the following passage in a curious letter of Mr. Vincent Gookin to Henry Cromwell, 27th Jan. 1657. "To-morrow the bill for decimating the cavaliers comes again into debate. It is debated with much heat by the major-generals, and as hotly almost by the anti-decimators. I believe the bill will be thrown out of the house. In my opinion those that speak against the bill have much to say in point of moral justice and prudence; but that which makes me fear the passing of the bill is, that thereby his highness' government will be more founded in force, and more removed from that natural foundation which the people in parliament are desirous to give him; supposing that he will become more theirs than now he is, and will in time find the safety and peace of the nation to be as well maintained by the laws of the land as by the sword. And truly, sir, if any others have pretensions to succeed him by their interest in the army, the more of force upholds his highness living, the greater when he is dead will be the hopes and advantages for such a one to effect his aim, who desires to succeed him. Lambert is much for decimations." Thurloe, vi. 20. He writes again, "I am confident it is judged by some that the interest of the godly cannot be preserved but by the dissolution of this, if not all parliaments; and their endeavours in it have been plainly discovered to the party most concerned to know them; which will, I believe, suddenly occasion a reducing of the government to kingship, to which his highness is not averse. Pierpoint and St. John have been often, but secretly, at Whitehall, I know, to advise thereof." P. 37. Thurloe again to the same Henry Cromwell, on Feb. 3., that the decimation bill was thrown out by a majority

aspired at least to the succession of the protectorship, found scope in the new project of monarchy, naturally obnoxious to the prejudices of true fanatics, and who still fancied themselves to have contended for a republican liberty. We find that even Fleetwood, allied by marriage to Cromwell, and not involved in the discontent of the major-generals, in all the sincerity of his clouded understanding, revolted from the invidious title, and would have retired from service had it been assumed. There seems therefore reason to think that Cromwell's refusal of the crown was an inevitable mortification. But he unsdoubtedly did not lose sight of the object for the short remainder of his life.[1]

The fundamental charter of the English commonwealth under the protectorship of Cromwell, had been the instrument of government, drawn up by the council of officers in December, 1653, and approved with modifications by the parliament of the next year. It was now changed to the "Petition and Advice," tendered to him by the present parliament in May, 1657, which made very essential innovations in the frame of polity. Though he bore, as formerly, the name of lord protector, we may say, speaking according to theoretical classification, and without reference to his actual exercise of power, which was nearly the same, that the English government in the first period should be ranged in the order of republics, though with a chief magistrate at its head; but that from 1657 it became substantially a monarchy, and ought to be placed in that class, notwithstanding the difference in the style of its sovereign. The petition and advice had been compiled with a constant respect to that article which conferred the royal dignity on the protector;[2] and when this was withdrawn at his request, the rest of the instrument was preserved with all its implied attributions

of forty:—"Some gentlemen do think themselves much trampled upon by this vote, and are extremely sensible thereof; and the truth is, it hath wrought such a heat in the house, that I fear little will be done for the future." Id. p. 38. No such bill appears, eo nomine, in the journals. But a bill for regulating the militia forces was thrown out, Jan 29., by 124 to 88. Col. Cromwell (Oliver's cousin) being a teller for the majority. Probably there was some clause in this renewing the decimation of the royalists.

[1] Whitelock, who was consulted by Cromwell on this business, and took an active part as one of the committee of conference appointed by the house of commons, intimates that the project was not really laid aside. "He was satisfied in his private judgment that it was fit for him to take upon him the title of king, and matters were prepared in order thereunto: but afterwards, by solicitation of the commonwealth's men, and fearing a mutiny and defection of a great part of the army, in case he should assume that title and office, his mind changed, and many of the officers of the army gave out great threatenings against him in case he should do it; he therefore thought it best to attend some better season and opportunity in this business, and refused it at this time with great seeming earnestness." P. 656. The chief advisers with Cromwell on this occasion, besides Whitelock, were lord Brogill, Pierrepoint, Thurloe, and sir Charles Wolesley. Many passages in Thurloe, vol. vii., show that Cromwell preserved to the last his views on royalty.

[2] Whitelock, 657. It had been agreed, in discussing the petition and advice in parliament, to postpone the first article requesting the protector to assume the title of king, till the rest of the *charter* (to use a modern but not inapplicable word) had been gone through. One of the subsequent articles fixing the revenue at 1,300,000*l.* per annum, provides that no part thereof should be raised by a land-tax, "and this not to be altered without the consent of the *three estates in parliament.*" A division took place, in consequence, no doubt, of this insidious expression, which was preserved by 97 to 50. Journ. 13th Mar. The first article was carried, after much debate, on Mar. 24., by 123 to 62. It stood thus: "Resolved, That your highness will be pleased to assume the name, style, dignity, and office of king of England, Scotland, and Ireland, and the respective dominions and territories thereunto belonging; and to exercise the same according to the laws of these nations." On Cromwell's first demurring to the proposal, it was resolved to adhere to the petition and advice by the small majority of 78 to 65. This was perhaps a sufficient warning that he should not proceed

of sovereignty. The style is that of subjects addressing a monarch; the powers it bestows, the privileges it claims, are supposed, according to the expressions employed, the one to be already his own, the other to emanate from his will. The necessity of his consent to laws, though nowhere mentioned, seems to have been taken for granted. An unlimited power of appointing a successor, unknown even to constitutional kingdoms was vested in the protector. He was inaugurated with solemnities applicable to monarchs; and what of itself is a sufficient test of the monarchical and republican species of government, an oath of allegiance was taken by every member of parliament to the protector singly, without any mention of the commonwealth.[1] It is surely, therefore, no paradox to assert that Oliver Cromwell was de facto sovereign of England, during the interval from June, 1657, to his death in September, 1658.

The zealous opponents of royalty could not be insensible that they had seen it revive in every thing except a title, which was not likely to remain long behind. (Thurloe, vi. 310.) It was too late however to oppose the first magistrate's personal authority. But there remained one important point of contention, which the new constitution had not fully settled. It was therein provided that the parliament should consist of two houses; namely, the commons, and what they always termed, with an awkward generality, the other house. This was to consist of not more than seventy, nor less than forty persons, to be nominated by the protector, and, as it stood at first, to be approved by the commons. But before the close of the session, the court party prevailed so far as to procure the repeal of this last condition;[2] and Cromwell accordingly issued writs of summons to persons of various parties, a few of the ancient peers, a few of his adversaries, whom he hoped to gain over, or at least to exclude from the commons, and of course a majority of his steady adherents. To all these he gave the title of lords; and in the next session their assembly denominated itself the lords' house.[3] This measure encountered considerable difficulty. The republican party, almost as much attached to that vote which had declared the house of lords useless, as to that which had abolished the monarchy, and well aware of the intimate connexion between the two, resisted the assumption of this aristocratic title, instead of that of the other house, which the petition and advice had sanctioned. The real peers feared to compromise their hereditary right by sitting in an assembly where the tenure was only during life; and disdained some of their colleagues, such as Pride and Hewson, low-born and insolent men, whom Cromwell had rather injudiciously bribed with this new nobility; though, with these few exceptions, his house of lords was respectably composed. Hence, in the short session of January, 1658,

[1] Journ. 21st June. This oath, which effectually declared the parliament to be the protector's subjects, was only carried by 63 to 55. Lambert refused it, and was dismissed the army in consequence, with a pension of 2000*l.* per annum, instead of his pay, 10*l.* a day. So well did they cater for themselves. Ludlow, 593. Broderick wrote to Hyde, June 30. 1657, that there was a general tranquillity in England, all parties seeming satisfied with the compromise; Fleetwood and Desborough more absolutely Cromwell's friends than before, and Lambert very silent. Clar. State Papers, 349.

[2] Compare Journ. 11th March with 24th June.

[3] Whitelock. 665. They were to have a judicial power, much like that of the real house of lords. Journals March.

wherein the late excluded members were permitted to take their seats, so many difficulties were made about acknowledging the lords' house by that denomination, that the protector hastily and angrily dissolved the parliament.[1]

It is a singular part of Cromwell's system of policy, that he would neither reign with parliaments nor without them; impatient of an opposition which he was sure to experience, he still never seems to have meditated the attainment of a naked and avowed despotism. This was probably due to his observation of the ruinous consequences that Charles had brought on himself by that course, and his knowledge of the temper of the English, never content without the exterior forms of liberty, as well as to the suggestions of counsellors who were not destitute of concern for the laws. He had also his great design yet to accomplish, which could only be safely done under the sanction of a parliament. A very short time, accordingly, before his death, we find that he had not only resolved to meet once more the representatives of the nation, but was tampering with several of the leading officers to obtain their consent to an hereditary succession. The majority however of a council of nine, to whom he referred this suggestion, would only consent that the protector for the time being should have the power of nominating his successor: a vain attempt to escape from that regal form of government which they had been taught to abhor.[2] But a sudden illness, of a nature seldom fatal except to a constitution already shattered by fatigue and anxiety, rendered abortive all these projects of Cromwell's ambition.

He left a fame behind him proportioned to his extraordinary fortunes and to the great qualities which sustained them; still more perhaps the admiration of strangers than of his country, because that sentiment was less alloyed by hatred, which seeks to extenuate the glory that irritates it. The nation itself forgave much to one who had brought back the renown of her ancient story, the traditions of Elizabeth's age, after the ignominious reigns of her successors. This contrast with James and Charles in their foreign policy gave additional lustre to the era of the protectorate. There could not but be a sense of national pride to see an Englishman, but yesterday raised above the many,

[1] Whitelock; Parl. Hist. The former says this was done against his advice. These debates about the other house are to be traced in the Journals, and are mentioned by Thurloe, vi. 107. &c.; and Ludlow, 597. Not one of the true peers, except lord Eure, took his seat in this house; and Haslerig, who had been nominated merely to weaken his influence, chose to retain his place in the commons. The list of these pretended lords in Thurloe, vi. 668., is not quite the same as that in Whitelock.

[2] This junto of nine debated how they might be secure against the cavaliers. One scheme was an oath of adjuration; but this it was thought they would all take: another was to lay heavy tax on them; "a moiety of their estates was spoken of; but this, I suppose, will not, go down with all the nine, and least of all will it be swallowed by the parliament, who will not be persuaded to punish both nocent and innocent without distinction." 22 June; Thurloe, vol. vii. p. 198. And again, p. 269.: "I believe we are out of danger of our junto, and I think also of ever having such another. As I take it, the report was made to his highness upon Thursday. After much consideration, the major part voted that succession in the government was indifferent whether it were by election or hereditary: but afterwards some would needs add that it was desirable to have it continued elective; that is, that the chief magistrate should always name his successor; and that of hereditary avoided; and I fear the word 'desirable' will be made 'necessary,' if ever it come upon the trial. His highness finding he can have no advice from those he most expected it from, saith he will take his own resolutions, and that he can no longer satisfy himself to sit still, and make himself guilty of the loss of all the honest party, and of the nation itself."

without one drop of blood in his veins which the princes of the earth could challenge as their own, receive the homage of those who acknowledged no right to power, and hardly any title to respect, except that of prescription. The sluggish pride of Spain, the mean-spirited cunning of Mazarin, the irregular imagination of Christina, sought with emulous ardour the friendship of our usurper.[1] He had the advantage of reaping the harvest which he had not sown, by an honourable treaty with Holland, the fruit of victories achieved under the parliament. But he still employed the great energies of Blake in the service for which he was so eminently fitted; and it is just to say that the maritime glory of England may first be traced from the era of the commonwealth in a track of continuous light. The oppressed protestants in catholic kingdoms, disgusted at the lukewarmness and half-apostacy of the Stuarts, looked up to him as their patron and mediator.[2] Courted by the two rival monarchies of Europe, he seemed to threaten both with his hostility; and when he declared against Spain, and attacked her West India possessions, with little pretence certainly of justice, but not by any means, as I conceive, with the impolicy sometimes charged against him, so auspicious was his star that the very failure and disappointment of that expedition obtained a more advantageous position for England than all the triumphs of her former kings.

Notwithstanding this external splendour, which has deceived some of our own, and most foreign writers, it is evident that the submission of the people to Cromwell was far from peaceable or voluntary. His strong and skilful grasp kept down a nation of enemies that must naturally, to judge from their numbers and inveteracy, have overwhelmed him. It required a dexterous management to play with the army, and without the army he could not have existed as sovereign for a day. Yet it seems highly improbable that had Cromwell lived, any insurrection or conspiracy, setting aside assassination, could have overthrown a possession so fenced by systematic vigilance, by experienced caution, by the respect and terror that belonged to his name. The royalist and republican intrigues had gone on for several years without intermission; but every part of their designs was open to him; and it appears that there was not courage or rather temerity sufficient to make any open demonstration of so prevalent a disaffection.[3]

The most superficial observers cannot have overlooked the general

[1] Harris, p. 348., has collected some curious instances of the servility of crowned heads to Oliver Cromwell.

[2] See Clarendon, vii. 297. He saved Nismes from military execution on account of a riot, wherein the Huguenots seem to have been much to blame. In the treaty between England and France, 1654, the French, in agreeing to the secret article about the exclusion of the royalists, endeavoured to make it reciprocal, that the commissioners of rebels in France should not be admitted in England. This did not seem very outrageous—but Cromwell objected that the French protestants would be thus excluded from imploring the assistance of England, if they were persecuted; protesting however that he was very far from having any thought to draw them from their obedience, as had been imputed to him, and that he would arm against them, if they should offer frivolously and without a cause to disturb the peace of France. Thurloe, iii. 6. In fact, the French protestants were in the habit of writing to Thurloe, as this collection testifies, whenever they thought themselves injured, which happened frequently enough. Cromwell's noble zeal in behalf of the Vaudois is well known. See this volume of Thurloe, p. 412, &c. Mazarin and the catholic powers in general endeavoured to lie down that massacre; but the usurper had too much protestant spirit to believe them. Id. 536.

[3] Ludlow, 607. Thurloe, i. and ii. passim.

resemblances in the fortunes and character of Cromwell, and of him who, more recently and upon an ampler theatre, has struck nations with wonder and awe. But the parallel may be traced more closely than perhaps has hitherto been remarked. Both raised to power by the only merit which a revolution leaves uncontroverted and untarnished, that of military achievements, in that reflux of public sentiment, when the fervid enthusiasm of democracy gives place to disgust at its excesses and a desire of firm government. The means of greatness the same to both; the extinction of a representative assembly, once national, but already mutilated by violence, and sunk by its submission to that illegal force into general contempt. In military science or the renown of their exploits, we cannot certainly rank Cromwell by the side of him for whose genius and ambition all Europe seemed the appointed quarry; but it may be said that the former's exploits were as much above the level of his contemporaries, and more the fruits of an original uneducated capacity. In civil government, there can be no adequate parallel between one who had sucked only the dregs of a besotted fanaticism, and one to whom the stores of reason and philosophy were open. But it must here be added that Cromwell, far unlike his antitype, never showed any signs of a legislative mind, or any desire to fix his renown on that noblest basis, the amelioration of social institutions. Both were eminent masters of human nature, and played with inferior capacities in all the security of powerful minds. Though both, coming at the conclusion of a struggle for liberty, trampled upon her claims, and sometimes spoke disdainfully of her name, each knew how to associate the interests of those who had contended for her with his own ascendancy, and made himself the representative of a victorious revolution. Those who had too much philosophy or zeal for freedom to give way to popular admiration for these illustrious usurpers, were yet amused with the adulation that lawful princes showered on them, more gratuitously in one instance, with servile terror in the other. Both too repaid in some measure this homage of the pretended great by turning their ambition towards those honours and titles which they knew to be so little connected with high desert. A fallen race of monarchs, which had made way for the greatness of each, cherished hopes of restoration by their power till each, by an inexpiable act of blood, manifested his determination to make no compromise with that line. Both possessed a certain coarse good nature and affability that covered the want of conscience, honour, and humanity; quick in passion, but not vindictive, and averse to unnecessary crimes. Their fortunes in the conclusion of life were indeed very different: one forfeited the affections of his people, which the other, in the character at least of their master, had never possessed; one furnished a moral to Europe by the continuance of his success, the other by the prodigiousness of his fall. A fresh resemblance arose afterwards, when the restoration of those royal families, whom their ascendant had kept under, revived ancient animosities, and excited new ones; those who from love of democratical liberty had borne the most deadly hatred to the apostates who had betrayed it, recovering some affection to their memory, out of aversion to a common enemy. Our English republicans have, with some exceptions, displayed a sympathy for the name of Cromwell; and

I need not observe how remarkably this holds good in the case of his mighty parallel.[1]

The death of a great man, even in the most regular course of affairs, seems always to create a sort of pause in the movement of society; it is always a problem to be solved only by experiment, whether the mechanism of government may not be disordered by the shock, or have been deprived of some of its moving powers. But what change could be so great as that from Oliver Cromwell to his son! from one beneath the terror of whose name a nation had cowered and foreign princes grown pale, one trained in twenty eventful years of revolution, the first of his age in the field or in council, to a young man fresh from a country life, uneducated, unused to business, as little a statesman as a soldier, and endowed by nature with capacities by no means above the common. It seems to have been a mistake in Oliver, that with the projects he had long formed in his eldest son's favour, he should have taken so little pains to fashion his mind and manners for the exercise of sovereign power, while he had placed the second in a very eminent and arduous station; or that, if he despaired of Richard's capacity, he should have trusted him to encounter those perils of disaffection and conspiracy which it had required all his own vigilance to avert. But whatever might be his plans, the sudden illness which carried him from the world left no time for completing them. The Petition and Advice had simply empowered him to appoint a successor, without prescribing the mode. It appeared consonant to law and reason that so important a trust should be executed in a notorious manner, and by a written instrument; or if a verbal nomination might seem sufficient, it was at least to be expected that this should be authenticated by solemn and indisputable testimony. No proof however was ever given of Richard's appointment by his father, except a recital in the proclamation of the privy council, which, whether well founded or otherwise, did not carry conviction to the minds of the people; and this, even if we call it but an informality, aggravated the numerous legal and natural deficiencies of his title to the government.[2]

[1] Mrs. Macauley, who had nothing of compromise or conciliation in her temper, and breathed the entire spirit of Vane and Ludlow, makes some vigorous and just animadversions on the favour shown to Cromwell by some professors of a regard for liberty. The dissenting writers, such as Neal, and in some measure Harris, were particularly open to this reproach. He long continued (perhaps the present tense is more appropriate) to be revered by the independents. One who well knew the manners he paints, has described the secret idolatry of that sect to their hero-saint. See Crabbe's Tale of the Frank Courtship.

Slingsby Bethell, an exception perhaps to the general politics of this sect, published in 1667 a tract, entitled The World's Mistake in Oliver Cromwell, with the purpose of decrying his policy and depreciating his genius. Harleian Miscellany, i. 280. But he who goes about to prove the world mistaken in its estimate of a public character, has always a difficult cause to maintain. Bethell, like Mrs. Macauley and others, labours to set up the Rump parliament against the soldier who kicked them; and asserts that Cromwell, having found 500,000*l.* in ready money, with the value of 700,000*l.* in stores, and the army in advance of their pay, (subject, however, to a debt of near 500,000*l.*); the customs and excise bringing in nearly a million annually, left a debt which, in Richard's parliament, was given in at 1,900,000*l.*, though he believes this to have been purposely exaggerated in order to procure supplies. I cannot say how far these sums are correct; but it is to be kept in mind, that one great resource of the parliament, confiscation, sequestration, composition, could not be repeated. Neither of these governments, it will be found on inquiry, were economical, especially in respect to the emoluments of those concerned in them.

[2] Whitelock, 674.; Ludlow, 611. 624. Lord Fauconberg writes in cipher to Henry Cromwell, on Aug. 30., that "Thurloe has seemed resolved to press him in his intervals to such a nomination (of a successor); but whether out of apprehensions to displease him if recovering,

This very difference however, in the personal qualifications of the father and the son, procured the latter some friends whom the former had never been able to gain. Many of the presbyterian party began to see the finger of God, as they called it, in his peaceable accession, and to think they owed subjection to one who came in neither by regicide, nor hypocrisy, nor violence.[1] Some cool-headed and sincere friends of liberty entertained similar opinions. Pierrepoint, one of the wisest men in England, who had stood aloof from the protector's government till the scheme of restoring monarchy came into discussion, had great hopes, as a writer of high authority informs us, of settling the nation in the enjoyment of its liberties under the young man; who was "so flexible," says that writer, "to good counsels, that there was nothing desirable in a prince which might not have been hoped in him, but a great spirit and a just title; the first of which sometimes doth more hurt than good in a sovereign; the latter would have been supplied by the people's deserved approbation." Pierrepoint believed that the restoration of the ancient family could not be effected without the ruin of the people's liberty, and of all who had been its champions; so that no royalist, he thought, who had any regard to his country, would attempt it: while this establishment of monarchy in Richard's person might reconcile that party, and compose all differences among men of weight and of zeal for the public good.[2] He acted accordingly on those principles; and became, as well as his friend St. John, who had been discountenanced by Oliver, a steady supporter of the young protector's administration. These two, with Thurloe, Whitelock, lord Broghill, and a very few more, formed a small phalanx of experienced counsellors around his unstable throne. And I must confess that their course of policy in sustaining Richard's government appears to me the most judicious that, in the actual circumstances, could have been adopted. Pregnant as the restoration of the exiled family was with incalculable dangers, the English monarchy would have revived with less lustre in the eyes of the vulgar, but with more security for peace and freedom, in the line of Cromwell. Time would have worn away the stains of ignoble birth and criminal usurpation; and the young man, whose misfortune has subjected him to rather an exaggerated charge of gross incapacity, would probably have reigned as well as most of those who are born in the purple.[3]

But this termination was defeated by the combination of some who knew not what they wished, and of some who wished what they could never attain. The general officers who had been well content to make Cromwell the first of themselves, or greater than themselves by their

or others hereafter, if it should not succeed, he has not yet done it, nor do I believe will." Thurloe, however, announces on Sept. 4. that "his highness was pleased before his death to declare my lord Richard successor. He did it on Monday; and the Lord hath so ordered it, that the council and army hath received him with all manner of affection. He is this day proclaimed, and hitherto there seems great face of peace; the Lord continue it." Thurloe State Papers, vii. 365. 372. Lord Fauconberg afterwards confirms the fact of Richard's nomination. P. 375.; and see 415.

[1] "Many sober men that called his father no better than a traitorous hypocrite, did begin to think that they owed him [R. C.] subjection," &c. Baxter, 100.

[2] Hutchinson, 343. She does not name Pierrepoint, but I have little doubt that he is meant.

[3] Richard's conduct is more than once commended in the correspondence of Thurloe, pp. 491. 497.; and in fact he did nothing amiss during his short administration.

own creation, had never forgiven his manifest design to reign over them as one of a superior order, and owing nothing to their pleasure. They had begun to cabal during his last illness. Though they did not oppose Richard's succession, they continued to hold meetings, not quite public, but exciting intense alarm in his council. As if disdaining the command of a clownish boy, they proposed that the station of lord general should be separated from that of protector, with the power over all commissions in the army, and conferred on Fleetwood; who, though his brother-in-law, was a certain instrument in their hands. The vain ambitious Lambert, aspiring, on the credit of some military reputation, to wield the sceptre of Cromwell, influenced this junto; while the commonwealth's party, some of whom were, or had been, in the army, drew over several of these ignorant and fanatical soldiers. Thurloe describes the posture of affairs in September and October, while all Europe was admiring the peaceable transmission of Oliver's power, as most alarming; and it may almost be said that Richard had already fallen when he was proclaimed the lord protector of England.[1]

It was necessary to summon a parliament on the usual score of obtaining money. Lord Broghill had advised this measure immediately on Oliver's death, (Thurloe, vii. 573.), and perhaps the delay might be rather prejudicial to the new establishment. But some of the council feared a parliament almost as much as they did the army. They called one, however, to meet Jan. 27. 1659, issuing writs in the ordinary manner to all boroughs which had been accustomed to send members, and consequently abandoning the reformed model of Cromwell. This Ludlow attributes to their expectation of greater influence among the small boroughs; but it may possibly be ascribed still more to a desire of returning by little and little to the ancient constitution, by eradicating the revolutionary innovations. The new parliament consisted of courtiers, as the Cromwell party were always denominated, of presbyterians, among whom some of cavalier principles crept in, and of republicans; the two latter nearly balancing, with their united weight, the ministerial majority.[2] They began with an oath of allegiance to the Protector, as presented by the late parliament, which, as usual in such cases, his enemies generally took without scruple.[3] But upon a bill

[1] Thurloe, vii. 320. et post, passim, in letters both from himself and lord Fauconberg. Thus immediately on Richard's accession, the former writes to Henry Cromwell, "It hath pleased God hitherto to give his highness your brother a very easy and peaceable entrance upon his government. There is not a dog that wags his tongue, so great a calm we are in. . . . But I must needs acquaint your excellency that there are some secret murmurings in the army, as if his highness were not general of the army as his father was," &c. P. 374. Here was the secret: the officers did not like to fall back under the civil power, by obeying one who was not a soldier. This soon displayed itself openly; and lord Fauconberg thought the game was over as early as Sept. 28. P. 413. It is to be observed that Fauconberg was secretly a royalist, and might hope to bring over his brother-in-law.

[2] Lord Fauconberg says, "the commonwealth men in the parliament were very numerous and beyond measure bold, but more than doubly overbalanced by the sober party; so that, though this make their results slow, we see no great cause as yet to fear." P. 612. And Dr. Barwick, a correspondent of lord Clarendon, tells him the republicans were the minority, but all speakers, zealous and diligent—it was likely to end in a titular protector, without militia or negative voice. P. 615.

According to a letter from Allen Broderick to Hyde, (Clar. St. Pap. iii. 443.) there were 47 republicans, from 100 to 140 neuters or moderates (including many royalists), and 170 court lawyers or officers.

[3] Ludlow tells us, that he contrived to sit in the house without taking the oath, and that some others did the same, p. 619.

being offered for the recognition of Richard as the undoubted lord protector and chief magistrate of the commonwealth, they made a stand against the word recognise, which was carried with difficulty, and caused him the mortification of throwing out the epithet undoubted. (Whitelock, Parl. Hist. 1530. 1541.) They subsequently discussed his negative voice in passing bills, which had been purposely slurred over in the Petition and Advice; but now every thing was disputed. The thorny question as to the powers and privileges of the other house came next into debate. It was carried by 177 to 113, to transact business with them. To this resolution an explanation was added, that it was not thereby intended to exclude such peers as had been faithful to the parliament, from their privilege of being duly summoned to be members of that house. The court supporting this absurd proviso, which confounded the ancient and modern systems of government, carried it by the small majority of 195 to 188.[1] They were stronger in rejecting an important motion, to make the approbation of the commons a preliminary to their transacting business with the persons now sitting in the other house as a house of parliament, by 183 voices to 146. But the opposition succeeded in inserting the words "during the present parliament," which left the matter still unsettled.[2] The sitting of the Scots and Irish members was also unsuccessfully opposed. Upon the whole, the court party, notwithstanding this coalition of very heterogeneous interests against them, were sufficiently powerful to disappoint the hopes which the royalist intriguers had entertained. A strong body of lawyers, led by Maynard, adhered to the government, which was supported also on some occasions by a part of the presbyterian interest, or, as then called, the moderate party; and Richard would probably have concluded the session with no loss of power, if either he or his parliament could have withstood the more formidable cabal of Wallingford House. This knot of officers, Fleetwood, Desborough, Berry, Sydenham, being the names most known among them, formed a coalition with the republican faction, who despaired of any success in parliament. The dissolution of that assembly was the main article of this league. Alarmed at the notorious caballing of the officers, the commons voted that, during the sitting of the parliament, there should be no general council, or meeting of the officers of the army without leave of the protector and of both houses.[3] Such a vote could only accelerate

[1] The numbers are differently, but, I suppose, erroneously stated in Thurloe, vii. 640. It is said, in a pamphlet of the time, that this clause was introduced to please the cavaliers, who acted with the court; Somers Tracts, vi. 482. Ludlow seems also to think, that these parties were united in this parliament, p. 629.; but this seems not very probable, and is contrary to some things we know. Clarendon had advised that the royalists should try to get into parliament, and there to oppose all raising of money, and every thing else that might tend to settle the government. Clar. State Papers, 411. This of course was their true game.

It is said, that Richard pressing the earl of Northumberland to sit in the other house, he declined, urging that when the government was such as his predecessors had served under, he would serve him with his life and fortune. Id. 433.

[2] Parl. Hist. Journ. 27. Jan. 14. 18. Feb. 1. 8. 21. 23. 28. Mar. The names of the tellers in these divisions show the connexions of leading individuals: we find indifferently presbyterian and republican names for the minority, as Fairfax, Lambert, Nevil, Haslerig, Townshend, Booth.

[3] There seems reason to believe that Richard would have met with more support both in the house and among the nation, if he had not been oppressed by the odium of some of his father's counsellors. A general indignation was felt at those who had condemned men to death in illegal tribunals, whom the republicans and cavaliers were impatient to bring to

their own downfall. Three days afterwards, the junto of Wallingford House insisted with Richard that he should dissolve parliament; to which, according to the advice of most of his council, and perhaps by an overruling necessity, he gave his consent.[1] This was immediately followed by a declaration of the council of officers, calling back the Long Parliament, such as it had been expelled in 1653, to those seats which had been filled meanwhile by so many transient successors.[2]

It is not in general difficult for an armed force to destroy a government; but something else than the sword is required to create one. The military conspirators were destitute of any leader whom they would acknowledge, or who had capacity to go through the civil labours of sovereignty; Lambert alone excepted, who was lying in wait for another occasion. They might have gone on with Richard, as a pageant of nominal authority. But their new allies, the commonwealth's men, insisted upon restoring the Long Parliament.[3] It seemed now the

justice. He was forced also to employ and to screen from vengeance his wise and experienced secretary Thurloe, master of all the secret springs that had moved his father's government, but obnoxious from the share he had taken in illegal and arbitrary measures. Petitions were presented to the house from several who had been committed to the Tower upon short written orders, without any formal warrant, or expressed cause of commitment. In the case of one of these, Mr. Portman, the house resolved that his apprehension, imprisonment, and detention in the Tower was illegal and unjust. Journ. 26 Feb. A still more flagrant tyranny was that frequently practised by Cromwell of sending persons disaffected to him as slaves to the West Indies. One Mr. Thomas petitioned the house of commons, complaining that he had been sold as a slave. A member of the court side justified it on the score of his being a malignant. Major-general Browne, a secret royalist, replied that he was nevertheless an Englishman and free-born. Thurloe had the presumption to say, that he had not thought to live to see the day, when such a thing as this, so justly and legally done by lawful authority, should be brought before parliament. Vane replied that he did not think to have seen the day when free-born Englishmen should be sold for slaves by such an arbitrary government. There were, it seems, not less than fifty gentlemen sold for slaves at Barbadoes. Clarendon State Papers, p. 447. The royalists had planned to attack Thurloe for some of these unjustifiable proceedings, which would have greatly embarrassed the government. Ibid. 423. 428. They hoped that Richard would be better disposed towards the king, if his three advisers, St. John, Thurloe, and Pierrepoint, all implacable to their cause, could be removed. But they were not strong enough in the house. If Richard, however, had continued in power, he must probably have sacrificed Thurloe to public opinion; and the consciousness of this may have led this minister to advise the dissolution of the parliament, and perhaps to betray his master, from the suspicion of which he is not free.

It ought to be remarked what an outrageous proof of Cromwell's tyranny is exhibited in this note. Many writers glide favourably over his administration, or content themselves with treating it as an usurpation, which can furnish no precedent, and consequently does not merit particular notice; but the effect of this generality is, that the world forms an imperfect notion of the degree of arbitrary power which he exerted; and I believe there are many who take Charles the First, and even Charles the Second, for greater violators of the laws than the protector. Neal and Harris are full of this dishonest bigotry.

[1] Richard advised with Broghill, Flennes, Thurloe, and others of his council, all of whom, except Whitelock, who informs us of this, were in favour of the dissolution. This caused, he says, much trouble to honest men; the cavaliers and republicans rejoiced at it; many of Richard's council were his enemies. P. 177. The army at first intended to raise money by their own authority: but this was deemed impossible, and it was resolved to recall the Long Parliament. Lambert and Haslerig accordingly met Lenthal, who was persuaded to remain in office; though, if Ludlow is right, against his will, being now connected with the court, and in the pretended house of lords. The parliament now consisted of 91 members. Parl. Hist. 1547. Harris quotes a manuscript journal of Montague, afterwards earl of Sandwich, wherein it is said that Richard's great error was to dissolve the parliament, and that he might have over-ruled the army, if he would have employed himself, Ingoldsby, lord Fauconberg, and others, who were suspected to be for the king. Life of Charles II. 194. He afterwards, p. 203., quotes Calamy's Life of Howe for the assertion that Richard stood out against his council, with Thurloe alone, that the parliament should not be dissolved. This is unlikely.

[2] This was carried against the previous question by 163 to 87. Journ. Abr. 111. Some of the protector's friends were alarmed at so high a vote against the army, which did in fact bring the matter to a crisis. Thurloe, vii. 659., et post.

[3] The army, according to Ludlow, had not made up their minds how to act after the disso-

policy, as much as duty, of the officers to obey that civil power they had set up. For to rule ostensibly was, as I have just observed, an impracticable scheme. But the contempt they felt for their pretended masters, and even a sort of necessity arising out of the blindness and passion of that little obligarchy, drove them to a step still more ruinous to their cause than that of deposing Richard, the expulsion once more of that assembly, now worn out and ridiculous in all men's eyes, yet seeming a sort of frail protection against mere anarchy, and the terror of the sword. Lambert, the chief actor in this last act of violence, and indeed many of the rest, might plead the right of self-defence. The prevailing faction in the parliament, led by Haslerig, a bold and headstrong man, perceived that, with very inferior pretensions, Lambert was aiming to tread in the steps of Cromwell; and remembering their negligence of opportunities, as they thought, in permitting the one to overthrow them, fancied that they would anticipate the other. Their intemperate votes cashiering Lambert, Desborough, and other officers, brought on, as every man of more prudence than Haslerig must have foreseen, an immediate revolution that crushed once more their boasted commonwealth.[1] They revived again soon after, not by any exertion of the people, who hated alike both parties, in their behalf, but through the disunion of their real masters, the army, and vented the impotent and injudicious rage of a desperate faction on all who had not gone every length on their side, till scarce any man of eminence was left to muster under the standard of Haslerig and his little knot of associates.[2]

I can by no means agree with those who find in the character of the English nation some absolute incompatibility with a republican constitution of government. Under favouring circumstances, it seems to me not at all incredible that such a polity might have existed for many ages in great prosperity, and without violent convulsions. For the English are, as a people, little subject to those bursts of passion which inflame the more imaginative multitudes of southern climates, and render them both apt for revolutions, and incapable of conducting them. Nor are they again of that sluggish and stationary temper, which chokes all desire of improvement, and even all zeal for freedom and justice, through which some free governments have degenerated into corrupt oligarchies. The most conspicuously successful experi-

lution of the parliament, and some were inclined to go on with Richard; but the republican party, who had coalesced with that faction of officers who took their denomination from Wallingford House, their place of meeting, insisted on the restoration of the old parliament; though they agreed to make some provision for Richard. Memoirs, pp. 635–646. Accordingly it was voted to give him an income of 10,000*l.* per annum. Journ. July 16.

[1] Journ., Sept. 23. et post. Whitelock, 683. Parl. Hist. 1562. Thurloe, vii. 703. et post. Ludlow's account of this period is the most interesting part of his Memoirs. The chief officers, it appears from his narrative, were soon disgusted with their republican allies, and "behaved with all imaginable perverseness and insolence" in the council of state, whenever they came there, which was but seldom, scrupling the oath to be true to the commonwealth against Charles Stuart or any other person. P. 657. He censures, however, the violence of Haslerig, "a man of a disobliging temper, sour and morose of temper, liable to be transported with passion, and in whom liberality seemed to be a vice. Yet to do him justice, I must acknowledge that I am under no manner of doubt concerning the rectitude and sincerity of his intentions." P. 718. Ludlow gave some offence to the hot-headed republicans by his half compliance with the army; and much disapproved the proceedings they adopted after their second restoration in Dec. 1659, against Vane and others. P. 800. Yet, though nominated on the committee of safety, on the expulsion of the parliament in Oct., he never sat on it, as Vane and Whitelock did.

[2] Journals, and other authorities above cited.

ment of republican institutions (and those far more democratical than, according to the general theory of politics, could be reconciled with perfect tranquillity,) has taken place in a people of English original; and though much must here be ascribed to the peculiarly fortunate situation of the nation to which I allude, we can hardly avoid giving some weight to the good sense and well-balanced temperament, which have come in their inheritance with our laws and our language. But the establishment of free commonwealths depends much rather on temporary causes, the influence of persons and particular events, and all those intricacies in the course of Providence which we term accident, than on any general maxims that can become the basis of prior calculation. In the year 1659, it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious: it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican church, the bacchanalian rant of sectaries, the morose preciseness of puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances, (a godly mode of expressing the same thing), or to Haslerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers, who in this utter confusion and abject state of their party, were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation; whether a given number should go out by rotation; and all those details of political mechanism so important in the eyes of theorists?[1] Every project of this description must have wanted what alone could give it either the pretext of legitimate existence, or the chance of permanency, popular consent; the republican party, if we exclude those who would have had a protector, and those fanatics who expected the appearance of Jesus Christ, was incalculably small; not, perhaps, amounting in the whole nation to more than a few hundred persons.

The little court of Charles at Brussels watched with trembling hope these convulsive struggles of their enemies. During the protectorship of Oliver their best chance appeared to be, that some of the numerous schemes for his assassination might take effect. Their correspondence, indeed, especially among the presbyterian or neutral party, became more extensive;[2] but these men were habitually cautious: and the marquis of Ormond, who went over to England in the beginning of

[1] The Rota Club, as it was called, was composed, chiefly at least, of these dealers in new constitutions, which was debated in due form. Harrington was one of the most conspicuous. Biographia Britannica, from Wood's Athenæ Oxonienses.

[2] Thurloe, vi. 579. Clarendon State Papers, 391. 395.

1658, though he reported the disaffection to be still more universal than he had expected, was forced to add, that there was little prospect of a rising until foreign troops should be landed in some part of the country; an aid, which Spain had frequently promised, but, with an English fleet at sea, could not very easily furnish.[1] The death of their puissant enemy brightened the visions of the royalists. Though the apparent peaceableness of Richard's government gave them some mortification, they continued to spread their toils through zealous emissaries, and found a very general willingness to restore the ancient constitution under its hereditary sovereign. Besides the cavaliers, who, though numerous and ardent, were impoverished and suspected, the chief presbyterians, lords Fairfax and Willoughby, the earls of Manchester and Denbigh, sir William Waller, sir George Booth, sir Ashley Cooper, Mr. Popham of Somerset, Mr. Howe of Glocester, sir Horatio Townshend of Norfolk, with more or less of zeal and activity, pledged themselves to the royal cause.[2] Lord Fauconberg, a royalist by family, who had married a daughter of Cromwell, undertook the important office of working on his brothers-in-law, Richard and Henry, whose position, in respect to the army and republican party, was so hazardous. It seems, in fact, that Richard, even during his continuance, had not refused to hear the king's agents,[3] and hopes were entertained of him: yet at that time even he could not reasonably be expected to abandon his apparent interests. But soon after his fall from power, while his influence, or rather that of his father's memory, was still supposed considerable with Montagu, Monk, and Lockhart, they negotiated with him to procure the accession of those persons, and of his brother Henry, for a pension of 20,000*l.* a year and a title.[4] It soon appeared, however, that those prudent veterans of revolution would not embark under such a pilot, and that Richard was not worth purchasing on the lowest terms. Even Henry Cromwell, with whom a separate treaty had been carried on, and who is said to have deter-

[1] Carte's Letters, ii. 118. In a letter of Ormond to Hyde about this time, he seems to have seen into the king's character, and speaks of him severely: "I fear his immoderate delight in empty, effeminate, and vulgar conversations, is become an irresistible part of his nature," &c. Clarendon State Papers, iii. 387.

[2] Clarendon Papers, 391. 418. 460. et post. Townshend, a young man who seems to have been much looked up to, was not, in fact, a presbyterian, but is reckoned among them as not being a cavalier, having come of age since the war, and his family neutral.

[3] This curious fact appears for the first time, I believe, in the Clarendon State Papers, unless it is any where intimated in Carte's collection of the Ormond letters. In the former collection we find several allusions to it; the first is in a letter from Rumbold, a royalist emissary, to Hyde, dated Dec. 2. 1658, p. 421.; from which I collect lord Fauconberg's share in this intrigue; which is also confirmed by a letter of Mordaunt to the king, in p. 423. "The lord Falconbridge protests that Cromwell is so remiss a person that he cannot play his own game, much less another man's, and is thereby discouraged from acting in business, having also many enemies who oppose his gaining either power or interest in the army or civil government, because they conceive his principles contrary to theirs. He says, Thurloe governs Cromwell, and St. John and Pierrepoint govern Thurloe; and therefore is not likely he will think himself in danger till these tell him so, nor seek a diversion of it but by their councils." Feb. 10. 1659. These ill-grounded hopes of Richard's accession to their cause appear in several other letters, and even Hyde seems to have given in to them, 434. 454., &c. Broderick, another active emissary of the royalists, fancied that the three above mentioned would restore the king if they dared, 477.; but this is quite unlikely.

[4] P. 469. This was carried on through colonel Henry Cromwell, his cousin. It is said that Richard had not courage to sign the letters to Monk and his other friends, which he afterwards repented, 491. The intrigues still went on with him for a little longer. This was in May, 1659.

mined at one time to proclaim the king at Dublin, from want of courage, or, as is more probable, of seriousness in what must have seemed so unnatural an undertaking, submitted quietly to the vote of parliament that deprived him of the command of Ireland.[1]

The conspiracy, if indeed so general a concert for the restoration of ancient laws and liberties ought to have so equivocal an appellation, became ripe in the summer of 1659. The royalists were to appear in arms in different quarters; several principal towns to be seized: but as the moment grew nigh, the courage of most began to fail. Twenty years of depression and continual failure mated the spirits of the cavaliers. The shade of Cromwell seemed to hover and protect the wreck of his greatness. Sir George Booth, almost alone, rose in Cheshire; every other scheme, intended to be executed simultaneously, failing through the increased prudence of those concerned, or the precautions taken by the government on secret intelligence of the plots; and Booth, thus deserted, made less resistance to Lambert than perhaps was in his power. (Clar. State Papers, 552, 556, &c.) This discomfiture, of course, damped the expectations of the king's party. The presbyterians thought themselves ill-used by their new allies, though their own friends had been almost equally cautious.[2] Sir Richard Willis, an old cavalier, and in all the secrets of their conspiracy, was detected in being a spy both of Cromwell and of the new government; a discovery which struck consternation into the party, who could hardly trust any one else with greater security.[3] In a less favourable posture of affairs, these untoward circumstances might have ruined Charles's hope; they served, as it was, to make it evident that he must look to some more efficacious aid than a people's good wishes for his restoration.

The royalists in England, who had played so deep a stake on the king's account, were not unnaturally desirous that he should risk something in the game, and continually pressed that either he or one of his brothers would land on the coast. His standard would become a rallying-point for the well-affected, and create such a demonstration of public sentiment as would overthrow the unstable government.

But Charles, not by nature of a chivalrous temper, shrunk from an enterprise which was certainly very hazardous, unless he could have obtained a greater assistance of troops from the Low Countries than was to be hoped.[4] He was as little inclined to permit the duke of York's engaging in it, on account of the differences that had existed between them, and his knowledge of an intrigue that was going forward in England, principally among the catholics, but with the mischievous talents of the duke of Buckingham at its head, to set up the

[1] Clarendon State Papers, 434. 500. et post. Thurloe, vi. 686. See also an enigmatical letter to Henry Cromwell, 625., which certainly hints at his union with the king, and Carte's Letters, ii. 293.

[2] Clarendon confesses, Life, p. 20., the cavaliers disliked the whole intrigue with the presbyterians, which was planned by Mordaunt, the most active and intelligent agent that the king possessed in England. The former, doubtless, perceived, that by extending the basis of the coalition, they should lose all chance of indemnity for their own sufferings; besides which, their timidity and irresolution are manifest in all the Clarendon correspondence at this period. See particularly 491. 520.

[3] Willis had done all in his power to obstruct the rising. Clarendon was very slow in believing this treachery, of which he had at length conclusive proofs. 552. 562.

[4] Clarendon Papers, 514. 530. 536. 543.

duke instead of himself.[1] He gave, however, fair words to his party, and continued for some time on the French coast, as if waiting for his opportunity. It was in great measure, as I suspect, to rid himself of this opportunity, that he set out on his long and very needless journey to the foot of the Pyrenees. Thither the two monarchs of France and Spain, wearied with twenty years of hostility without a cause and without a purpose, had sent their ministers to conclude the celebrated treaty which bears the name of those mountains. Charles had long cherished hopes that the first fruits of their reconciliation would be a joint armament to place him on the English throne: many of his adherents almost despaired of any other means of restoration. But Lewis de Haro was a timid statesman, and Mazarin a cunning one: there was little to expect from their generosity; and the price of assistance might probably be such as none but desperate and unscrupulous exiles would offer, and the English nation would with unanimous indignation reject. It was most fortunate for Charles that he contracted no public engagement with these foreign powers, whose co-operation must either have failed of success, or have placed on his head a degraded and unstable crown. The full toleration of popery in England, its establishment in Ireland, its profession by the sovereign and his family, the surrender of Jamaica, Dunkirk, and probably the Norman islands, were conditions on which the people might have thought the restoration of the Stuart line too dearly obtained.

It was a more desirable object for the king to bring over, if possible, some of the leaders of the commonwealth. Except Vane, accordingly, and the decided republicans, there was hardly any man of consequence whom his agents did not attempt, or, at least, from whom they did not entertain hopes. Three stood at this time conspicuous above the rest, not all of them in ability, but in apparent power of serving the royal cause by their defection, Fleetwood, Lambert, and Monk. The first had discovered, as far as his understanding was capable of perceiving anything, that he had been the dupe of more crafty men in the cabals against Richard Cromwell, whose complete fall from power he had neither designed nor foreseen. In pique and vexation, he listened to the overtures of the royalist agents, and sometimes, if we believe their assertions, even promised to declare for the king.[2] But his reso-

[1] Clar. Papers, 425. 427. 458. 462. 475. 526. 579. It is evident that the catholics had greater hopes from the duke than from the king, and considered the former as already their own. A remarkable letter of Morley to Hyde, April 24. 1659, p. 458., shows the suspicions already entertained of him by the writer in point of religion; and Hyde is plainly not free from apprehension that he might favour the scheme of supplanting his brother. The intrigue might have gone a great way, though we may not think it probable that their alarm magnified the danger. "Let me tell you," says sir Antony Ashley Cooper in a letter to Hyde, "that Wildman is as much an enemy now to the king as he was before a seeming friend; yet not upon the account of a commonwealth, for his ambition meets with every day repulses and affronts from that party; but upon a finer spun design of setting up the interest of the duke of York against the king: in which design I fear you will find confederated the duke of Bucks, who perhaps may draw away with him lord Fairfax, the presbyterians, levellers, and many catholics. I am apt to think these things are not transacted without the privity of the queen; and I pray God that they have not an ill influence upon your affairs in France." 475. Buckingham was surmised to have been formerly reconciled to the church of Rome. 427. Some supposed that he, with his friend Wildman, were for a republic. But such men are for nothing but the intrigue of the moment. These projects of Buckingham to set up the duke of York are hinted at in a pamphlet by Shaftesbury or one of his party, written about 1680. Somers Tracts, viii. 342.

[2] Hyde writes to the duke of Ormond: "I pray inform the king, that Fleetwood makes great confession of being converted, and of a resolution to serve the king upon the first oppor-

lutions were not to be relied upon, nor his influence likely to prove considerable; though from his post of lieutenant-general of the army, and long accustomed precedence, he obtained a sort of outward credit far beyond his capacity. Lambert was of a very different stamp; eager, enterprising, ambitious, but destitute of the qualities that inspire respect or confidence. Far from the weak enthusiasm of Fleetwood, he gave offence by displaying less show of religion than the temper of his party required, and still more by a current suspicion that his secret faith was that of the church of Rome, to which the partiality of the catholics towards him gave support. (Id. 588. Carte's Letters, ii. 225.) The crafty unfettered ambition of Lambert rendered it not unlikely that, finding his own schemes of sovereignty impracticable, he would make terms with the king; and there were not wanting those who recommended the latter to secure his services by the offer of marrying his daughter;[1] but it does not appear that any actual overtures were made on either side.

There remained one man of eminent miliiary reputation, in the command of a considerable insulated army, to whom the royalists anxiously looked with alternate hope and despondency. Monk's early connexions were with the king's party, among whom he had been defeated and taken prisoner by Fairfax at Namptwich. Yet even in this period of his life he had not escaped suspicions of disaffection, which he effaced by continuing in prison till the termination of the war in England. He then accepted a commission from the parliament to serve against the Irish; and now falling entirely into his new line of politics, became strongly attached to Cromwell, by whom he was left in the military government, or rather vice-royalty of Scotland, which he had reduced to subjection, and kept under with a vigorous hand. Charles had once, it is said, attempted to seduce him by a letter from Cologne, which he instantly transmitted to the protector.[2] Upon Oliver's death, he wrote a very sensible letter to Richard Cromwell, containing his advice for the government. He recommends him to obtain the affections of the moderate presbyterian ministers, who have much influence over the people, to summon to his house of lords the wisest and most faithful of the old nobility and some of the leading gentry, to diminish the number of superior officers in the army, by throwing every two regiments into one, and to take into his council

tunity." Oct. 11. 1650. Carte's Letters, ii. 231. See Clar. State Papers, 551. (Sept. 2.) and 577. But it is said afterwards, that he had "not courage enough to follow the honest thoughts which some time possess him," 592. (Oct. 31.), and that Manchester, Popham, and others, tried what they could do with Fleetwood; but "though they left him with good resolutions, they were so weak as not to continue longer than the next temptation," 635. (Dec. 27.)

[1] Lord Hatton, an old royalist, suggested this humiliating proposition in terms scarcely less so to the heir of Cerdic and Fergus. "The race is a *very good gentleman's family*, and kings have condescended to marry subjects. The lady is pretty, of an extraordinary sweetness of disposition, and very virtuously and ingenuously disposed; the father is a person, set aside his unhappy engagement, of very great parts and noble inclinations." Clar. State Papers, 592. Yet, after all, Miss Lambert was hardly more a mes-alliance than Hortense Mancini, whom Charles had asked for in vain.

[2] Biog. Brit. art. Monk. The royalists continued to entertain hopes of him, especially after Oliver's death. Clar. Papers, iii. 393. 395. 396. In a sensible letter of Colepepper to Hyde, Sept. 20. 1658, he points out Monk as able alone to restore the king, and not absolutely averse to it, either in his principles or affections; kept hitherto by the vanity of adhering to his professions, and by his affection to Cromwell, the latter whereof is dissolved both by the jealousies he entertained of him, and by his death, &c. Id. 412.

as his chief advisers Whitelock, St. John, lord Broghill, sir Richard Onslow, Pierrepoint, and Thurloe.[1] The judiciousness of this advice is the surest evidence of its sincerity, and must leave no doubt on our minds that Monk was at that time very far from harbouring any thoughts of the king's restoration.

But when, through the force of circumstances and the deficiencies in the young protector's capacity, he saw the house of Cromwell for ever fallen, it was for Monk to consider what course he should follow, and by what means the nation was to be rescued from the state of anarchy that seemed to menace it. That very different plans must have passed through his mind before he commenced his march from Scotland, it is easy to conjecture; but at what time his determination was finally taken, we cannot certainly pronounce.[2] It would be the most honourable supposition to believe that he was sincere in those solemn protestations of adherence to the commonwealth which he poured forth, as well during his march as after his arrival in London; till discovering, at length, the popular zeal for the king's restoration, he concurred in a change which it would have been absurd, and perhaps impracticable, to resist. This however seems not easily reconcilable to Monk's proceedings in new-modelling his army, and confiding power, both in Scotland and England, to men of known intentions towards royalty; nor did his assurances of support to the republican party become less

[1] Thurloe, vii. 387. Monk wrote about the same time against the earl of Argyle, as not a friend to the government, 584. Two years afterwards he took away his life as being too much so.

[2] If the account of his chaplain, Dr. Price, republished in Maseres's Tracts, vol. ii., be worthy of trust, Monk gave so much encouragement to his brother, a clergyman, secretly despatched to Scotland by sir John Grenvil, his relation, in June, 1659, as to have approved sir George Booth's insurrection, and to have been on the point of publishing a declaration in favour of it. P. 718. But this is flatly in contradiction of what Clarendon asserts, that the general not only sent away his brother with no hopes, but threatened to hang him if he came again on such an errand. And, in fact, if any thing so favourable as what Price tells us had occurred, the king could not fail to have known it. Clar. State Papers, iii. 543. This throws some suspicion on Price's subsequent narrative (so far as it professes to relate the general's intentions); so that I rely far less on it than on Monk's own behaviour, which seems irreconcilable with his professions of republican principles. It is however an obscure point of history, which will easily admit of different opinions, and I may not improbably change my own.

The story told by Locke, on lord Shaftesbury's authority, that Monk had agreed with the French ambassador to take on himself the government, wherein he was to have the support of Mazarin, and that his wife, having overheard what was going forward, sent notice to Shaftesbury, who was thus enabled to frustrate the intrigue (Locke's Works, iii. 456.), seems to have been confirmed lately by Mr. D'Israeli, in an extract from the manuscript memoirs of sir Thomas Browne (Curiosities of Literature, N. S. vol. ii.), but in terms so nearly resembling those of Locke, that it seems to be merely an echo. It is certain, as we find by Phillips's continuation of Baker's Chronicle (written, in this part, by sir Thomas Clarges, Monk's brother-in-law), that Bourdeaux, the French ambassador, did make such overtures to the general, who absolutely refused to enter upon them; but, as Clarges admits, received a visit from the ambassador, on condition that he should propose nothing in relation to public matters. I quote from Kennet's Register, 85. But, according to my present impression, this is more likely to have been the foundation of Shaftesbury's story, who might have heard from Mrs. Monk the circumstance of the visit, and conceived suspicions upon it, which he afterwards turned into proofs. It was evidently not in Monk's power to have usurped the government, after he had let the royalist inclinations of the people show themselves; and he was by no means of a rash character. He must have taken his resolution when the secluded members were restored to the house, February 21.; and this alleged intrigue with Mazarin could hardly have been so early.

It may be added, that in one of the pamphlets about the time of the exclusion bill, written by Shaftesbury himself or one of his party (Somers Tracts, viii. 338.), he is hinted to have principally brought about the restoration; "without whose courage and dexterity some men, the most highly rewarded, had done otherwise than they did." But this still depends on his veracity.

frequent or explicit at a time when every one must believe that he had taken his resolution, and even after he had communicated with the king. I incline therefore, upon the whole, to believe that Monk, not accustomed to respect the Rump parliament, and incapable, both by his temperament and by the course of his life, of any enthusiasm for the name of liberty, had satisfied himself as to the expediency of the king's restoration from the time that the Cromwells had sunk below his power to assist them; though his projects were still subservient to his own security, which he was resolved not to forfeit by any premature declaration or unsuccessful enterprise. If the coalition of cavaliers and presbyterians, and the strong bent of the entire nation, had not convinced this warv dissembler that he could not fail of success, he would have continued true to his professions as the general of a commonwealth, content with crushing his rival Lambert, and breaking that fanatical interest which he most disliked. That he aimed at such a sovereignty as Cromwell had usurped has been the natural conjecture of many, but does not appear to me either warranted by any presumptive evidence, or consonant to the good sense and phlegmatic temper of Monk.

At the moment when, with a small but veteran army of 7000 men he took up his quarters in London, it seemed to be within his arbitrament which way the scale should preponderate. On one side were the wishes of the nation, but restrained by fear; on the other, established possession, maintained by the sword, but rendered precarious by disunion and treachery. It is certainly very possible that, by keeping close to the parliament, Monk might have retarded, at least for a considerable time, the great event which has immortalized him. But it can hardly be said that the king's restoration was rather owing to him than to the general sentiments of the nation, and almost the necessity of circumstances, which had already made every judicious person anticipate the sole termination of our civil discord which they had prepared. Whitelock, who, incapable of refusing compliance with the ruling power, had sat in the committee of safety established in October 1659 by the officers who had expelled the parliament, has recorded a curious anecdote, whence we may collect how little was wanting to prevent Monk from being the great mover in the restoration. He had for some time, as appears by his journal, entertained a persuasion that the general meditated nothing but the king's return, to which he was doubtless himself well inclined, except from some apprehension for the public interest, and some also for his own. This induced him to have a private conference with Fleetwood, which he enters as of the 22nd December 1659, wherein, after pointing out the probable designs of Monk, he urged him either to take possession of the Tower, and declare for a free parliament, in which he would have the assistance of the city, or to send some trusty person to Breda, who might offer to bring in the king upon such terms as should be settled. Both these propositions were intended as different methods of bringing about a revolution, which he judged to be inevitable. "By this means," he contended, "Fleetwood might make terms with the king for preservation of himself and his friends, and of that cause, in a good measure, in which they had been engaged; but, if it were left to Monk,

they and all that had been done would be left to the danger of destruction. Fleetwood then asked me, 'If I would be willing to go myself upon this employment?' I answered, 'that I would go, if Fleetwood thought fit to send me.' And after much other discourse to this effect, Fleetwood seemed fully satisfied to send me to the king, and desired me to go and prepare myself forthwith for the journey; and that in the mean time Fleetwood and his friends would prepare the instructions for me, so that I might begin my journey this evening or to-morrow morning early.

"I going away from Fleetwood, met Vane, Desborough, and Berry in the next room, coming to speak with Fleetwood, who thereupon desired me to stay a little; and I suspected what would be the issue of their consultation, and within a quarter of an hour Fleetwood came to me and in much passion said to me, 'I cannot do it, I cannot do it.' I desired his reason why he could not do it. He answered, 'Those gentlemen have remembered me; and it is true, that I am engaged not to do any such thing without my lord Lambert's consent.' I replied, 'that Lambert was at too great a distance to have his consent to this business, which must be instantly acted.' Fleetwood again said, 'I cannot do it without him.' Then I said, 'You will ruin yourself and your friends.' He said, 'I cannot help it.' Then I told him I must take my leave, and so we parted." (Whitelock, 690.)

Whatever might have been in the power of Monk, by adhering to his declarations of obedience to the parliament, it would have been too late for him, after consenting to the restoration of the secluded members to their seats on February 21. 1660, to withstand the settlement which it seems incredible that he should not at that time have desired. That he continued for at least six weeks afterwards, in a course of astonishing dissimulation, so as to deceive, in a great measure, almost all the royalists, who were distrusting his intentions at the very moment when he made his first and most private tender of service to the king through sir John Grenville about the beginning of April, might at first seem rather to have proceeded from a sort of inability to shake off his inveterate reservedness, than from consummate prudence and discretion. For any sudden risings in the king's favour, or an intrigue in the council of state, might easily have brought about the restoration without his concurrence; and, even as it was, the language held in the house of commons before their dissolution, the votes expunging all that appeared on their journals against the regal government and the house of lords,[1] and, above all, the course of the elections for the new parliament, made it sufficiently evident that the general had delayed his assurances of loyalty till they had lost a part of their value. It is

[1] The engagement was repeated Mar. 13. This was itself tantamount to a declaration in favour of the king; though perhaps the previous order of Mar. 5., that the solemn league and covenant should be read in churches, was still more so. Prynne was the first who had the boldness to speak for the king, declaring his opinion that the parliament was dissolved by the death of Charles the First; he was supported by one or two more. Clar. Papers, 696. Thurloe, vii. 854. Carte's Letters, ii. 312. Prynne wrote a pamphlet advising the peers to meet and issue writs for a new parliament, according to the provisions of the triennial act; which in fact was no bad expedient. Somers Tracts, vi. 534.

A speech of sir Harbottle Grimston before the close of the parliament, Mar. 1660, is more explicit for the king's restoration than any thing I have seen elsewhere; and as I do not know that it has been printed, I will give an extract from the Harleian MS. 1576.

He urges it as necessary to be done by them, and not left for the next parliament, who all

however a full explanation of Monk's public conduct, that he was not secure of the army, chiefly imbued with fanatical principles, and bearing an inveterate hatred towards the name of Charles Stuart. A correspondent of the king writes to him on the 28th of March: "the army is not yet in a state to hear your name publicly." (Clar. State Papers, 711.). In the beginning of that month, many of the officers, instigated by Haslerig and his friends, had protested to Monk against the proceedings of the house, insisting that they should abjure the king and house of lords. He repressed their mutinous spirit, and bade them obey the parliament, as he should do. (Id. 696.) Hence he redoubled his protestations of abhorrence of monarchy, and seemed for several weeks, in exterior demonstrations, rather the grand impediment to the king's restoration, than the one person who was to have the credit of it.[1] Meanwhile he silently proceeded in displacing the officers whom he could least trust, and disposing the regiments near to the metropolis, or at a distance, according to his knowledge of their tempers; the parliament having given him a commission as lord general of all the

men believed would restore him. "This is so true and so well understood, that we all believe that whatsoever our thoughts are, this will be the opinion of the succeeding parliament, whose concerns as well as affections will make them active for his introduction. And I appeal then to your own judgments whether it is likely that those persons, as to their particular interest more unconcerned, and probably less knowing in the affairs of the nation, can or would obtain for any those terms or articles as we are yet in a capacity to procure both for them and us. I must confess sincerely that it would be as strange to me as a miracle, did I not know that God infatuates whom he designs to destroy, that we can see the king's return so unavoidable, and yet to be more studious of serving him, or at least ourselves, in the managing of his recall.

"The general, that noble personage to whom under God we do and must owe all the advantages of our past and future changes, will be as far from opposing us in the design, as the design is removed from the disadvantage of the nation. He himself is, I am confident, of the same opinion; and if he has not yet given notice of it to the house, it is not that he does not look upon it as the best expedient; but he only forbears to oppose it, that he might not seem to necessitate us, and by an over early discovery of his own judgment be thought to take from us the freedom of ours."

In another place he says, "That the recalling of our king in this only way (for composure of affairs), is already grown almost as visible as true; and, were it but confessed of all of whom it is believed, I should quickly hear from the greatest part of this house what now it hears alone from me. Had we as little reason to fear as we have too much, that if we bring not in the king, he either already is, or shortly may be, in a capacity of coming in unsent for; methinks the very knowledge of his right were enough to keep just persons, such as we would be conceived to be, from being accessary to his longer absence. We are already, and but justly, reported to have been the occasion of our prince's banishment; we may then, with reason and equal truth, for aught I know, be thought to have been the contrivers of it; unless we endeavour the contrary, by not suffering the mischief to continue longer which is in our power to remove."

Such passages as these, and the general tenor of public speeches, sermons, and pamphlets in the spring of 1660, show how little Monk can be said to have restored Charles II.; except so far as he did not persist in preventing it so long as he might have done.

[1] Id. 678. et post. He wrote a letter (Jan. 21.) to the gentry of Devon, who had petitioned the speaker for the re-admission of the secluded members, objecting to that measure as likely to bring in monarchy, very judicious, and with an air of sincerity that might deceive any one; and after the restoration of these secluded members, he made a speech to them (Feb. 21), strongly against monarchy; and that so ingeniously, upon such good reasons, so much without invective or fanaticism, that the professional hypocrites, who were used to their own tone of imposture, were deceived by his. Cromwell was a mere bungler to him. See these in Harris's Charles II. 296., or Somers Tracts, vi. 551. It cannot be wondered at that the royalists were exasperated at Monk's behaviour. They published abusive pamphlets against him in Feb., from which Kennet, in his Register, p. 53, gives quotations:—"Whereas he was the common hopes of all men, he is now the common hatred of all men, as a traitor more detestable than Oliver himself, who, though he manacled the citizens' hands, yet never took away the doors of the city," and so forth. It appears by the letters of Mordaunt and Broderick to Hyde, and those of Hyde himself in the Clarendon Papers, that they had no sort of confidence in Monk till the end of March; though Barwick, another of his correspondents, seems to have had more insight into the general's designs (Thurloe, 852. 860. 870.), who had expressed himself to a friend of the writer, probably Clobery, fully in favour of the king, before March 19.

forces in the three kingdoms. (Clar. 699. 705. Thurloe, vii. 860. 870.) The commissioners appointed by parliament for raising the militia in each county were chiefly gentlemen of the presbyterian party; and there seemed likely to be such a considerable force under their orders as might rescue the nation from its ignominious servitude to the army. In fact, some of the royalists expected that the great question would not be carried without an appeal to the sword.[1] The delay of Monk in privately assuring the king of his fidelity is still not easy to be explained, but may have proceeded from a want of confidence in Charles's secrecy, or that of his counsellors. It must be admitted that lord Clarendon, who has written with some minuteness and accuracy this important part of his history, has more than insinuated (especially as we now read his genuine language, which the ill faith of his original editors had shamefully garbled) that Monk entertained no purposes in the king's favour till the last moment; but a manifest prejudice that shows itself in all his writings against the general, derived partly from offence at his extreme reserve and caution during this period, partly from personal resentment of Monk's behaviour at the time of his own impeachment, greatly takes off from the weight of the noble historian's judgment.[2]

The months of March and April, 1660, were a period of extreme inquietude, during which every one spoke of the king's restoration as imminent, yet none could distinctly perceive by what means it would be effected, and much less how the difficulties of such a settlement could be overcome.[3] As the moment approached, men turned their attention more to the obstacles and dangers that lay in their way. The restoration of a banished family, concerning whom they knew

[1] A correspondent of Ormond writes, Mar. 16.: "This night the fatal long parliament hath dissolved itself. All this appears well; but I believe we shall not be settled upon our ancient foundations without a war, for which all prepare vigorously and openly." Carte's Letters, ii. 513. It appears also from a letter of Massey to Hyde, that a rising in different counties was intended. Thurloe, 854.

[2] After giving the substance of Monk's speech to the house, recommending a new parliament but insisting on commonwealth principles, Clarendon goes on; "There was no dissimulation in this, in order to cover and conceal his good intentions to the king; for without doubt he had not to this hour entertained any purpose or thought to serve him, but was really of the opinion he expressed in his paper, that it was a work impossible; and desired nothing but that he might see a commonwealth established on such a model as Holland was, where he had been bred, and that himself might enjoy the authority and place which the prince of Orange possessed in that government."

[3] The Clarendon and Thurloe Papers are full of more proofs of this than can be quoted, and are very amusing to read, as a perpetually shifting picture of hopes and fears, and conjectures right or wrong. Pepys's Diary also, in these two months, strikingly shows the prevailing uncertainty as to Monk's intentions, as well as the general desire of having the king brought in. It seems plain, that if he had delayed a very little longer, he would have lost the whole credit of the restoration. All parties began to crowd in with addresses to the king in the first part of April, before Monk was known to have declared himself. Thurloe, among others, was full of his offers, though evidently anxious to find out whether the king had an interest with Monk, p. 858. The royalists had long entertained hopes, from time to time, of this deep politician: but it is certain he never wished well to their cause, and with St. John and Pierrepoint, had been most zealous, to the last moment that it seemed practicable, against the restoration. There had been, so late as Feb. 1660, or even afterwards, a strange plan of setting up again Richard Cromwell, wherein not only these three, but Montague, Jones, and others, were thought to be concerned, erroneously no doubt as to Montague. Clar. State Papers, 693. Carte's Letters, ii. 310. 339. "One of the greatest reasons they alleged, was, that the king's party, consisting altogether of indigent men, will become powerful by little and little to force the king, whatever be his own disposition, to break any engagement he can now make; and, since the nation is bent on a single person, none will combine all interests so well as Richard." This made Monk, it is said, jealous of St. John, and he was chosen at Cambridge to exclude him. In a letter of Thurloe to Downing at the Hague, April 6., he says, "that many of the presby-

little, and what they knew not entirely to their satisfaction, with ruined, perhaps revengeful followers; the returning ascendancy of a distressed party, who had sustained losses that could not be repaired without fresh changes of property, injuries that could not be atoned without fresh severities; the conflicting pretensions of two churches, one loth to release its claim, the other to yield its possession; the unsettled dissensions between the crown and parliament, suspended only by civil war and usurpation; all seemed pregnant with such difficulties that prudent men could hardly look forward to the impending revolution without some hesitation and anxiety.[1] Hence Pierrepoint, one of the wisest statesmen in England, though not so implicated in past transactions as to have much to fear, seems never to have overcome his repugnance to the recall of the king; and I am by no means convinced that the slowness of Monk himself was not in some measure owing to his sense of the embarrassments that might attend that event. The presbyterians, generally speaking, had always been on their guard against an unconditional restoration. They felt much more of hatred to the prevailing power than of attachment to the house of Stuart; and had no disposition to relinquish, either as to church or state government, those principles for which they had fought against Charles the First. Hence they began, from the very time that they entered into the coalition, that is, the spring and summer of 1659, to talk of the treaty of Newport, as if all that had passed since their vote of 5th December 1648, that the king's concessions were a sufficient ground whereon to proceed to the settlement of the kingdom, had been like an hideous dream, from which they had awakened to proceed exactly in their former course.[2] The council of state, appointed on the 23d of

terians are alarmed at the prospect, and thinking how to keep the king out without joining the sectaries." vii. 887. This could hardly be achieved but by setting up Richard. Yet that, as is truly said in one of the letters quoted, was ridiculous. None were so conspicuous and intrepid on the king's side as the presbyterian ministers. Reynolds preached before the lord mayor, Feb. 28., with manifest allusion to the restoration; Gauden (who may be reckoned on that side, as conforming to it,) on the same day much more explicity. Kennet's Register, 69. Sharp says, in a letter to a correspondent in Scotland, that he, Ash, and Calamy, had a long conversation with Monk, Mar. 11., "and convinced him a commonwealth was impracticable, and to our sense sent him off that sense he hath hitherto maintained, and came from him as being satisfied of the necessity of dissolving this house, and calling a new parliament." Id. p. 81. Baxter thinks the presbyterian ministers, together with Clarges and Morrice, turned Monk's resolution, and induced him to declare for the king. Life, p. 2. This is a very plausible conjecture, though I incline to think Monk more disposed that way by his own judgment or his wife's. But she was influenced by the presbyterian clergy. They evidently deserved of Charles what they did not meet with.

[1] The royalists began too soon with threatening speeches, which well nigh frustrated their object. Id. 721, 722. 727. Carte's Letters, 318. Thurloe, 887. One Dr. Griffith published a little book vindicating the late king in his war against the parliament, for which the ruling party were by no means ripe; and, having justified it before the council, was committed to the Gate-house early in April. Id. ibid. These imprudences occasioned the king's declaration from Breda. Somers Tracts, vi. 562. Another also was published, April 25. 1660, signed by several peers, knights, divines, &c., of the royalist party, disclaiming all private passions and resentments. Kennet's Register, 120. Clar. vii. 471. But these public professions were weak disguises, when belied by their current language. See Baxter, 217. Marchmont Needham, in a tract entitled, "Interest will not lye," (written in answer to an artful pamphlet ascribed to Fell, afterwards bishop of Oxford, and reprinted in Maseres's Tracts, "The Interest of England stated,") endeavoured to alarm all other parties, especially the presbyterians, with representations of the violence they had to expect from that of the king. Harris's Charles, II. 268.

[2] Proofs of the disposition among this party to revive the treaty of the Isle of Wight occur perpetually in the Thurloe and Clarendon Papers, and in those published by Carte. The king's agents in England evidently expected nothing better; and were, generally speaking, much for his accepting the propositions. "The presbyterian lords," says sir Allen Broderick to Hyde,

February, two days after the return of the secluded members, consisted principally of this party. And there can, I conceive, be no question that if Monk had continued his neutrality to the last, they would, in conjunction with the new parliament, have sent over propositions for the king's acceptance. Meetings were held of the chief presbyterian lords, Manchester, Northumberland, Bedford, Saye, with Pierrepoint (who, finding it too late to prevent the king's return, endeavoured to render it as little dangerous as possible), Hollis, Annesley, sir William Waller, Lewis, and other leaders of that party. Monk sometimes attended on these occasions, and always urged the most rigid limitations.[1] His sincerity in this was the less suspected, that his wife, to whom he was notoriously submissive, was entirely presbyterian, though a friend to the king; and his own preference of that sect had always been declared in a more consistent and unequivocal manner than was usual to his dark temper.

These projected limitations, which but a few weeks before Charles would have thankfully accepted, seemed now intolerable; so rapidly do men learn, in the course of prosperous fortune, to scorn what they just before hardly presumed to expect. Those seemed his friends, not who desired to restore him, but who would do so at the least sacrifice of his power and pride. Several of the council, and others in high posts, sent word that they would resist the imposition of unreasonable terms.[2] Monk himself redeemed his ambiguous and dilatory behaviour, by taking the restoration, as it were, out of the hands of the council, and suggesting the judicious scheme of anticipating their proposals by the king's letter to the two houses of parliament. For this purpose he had managed, with all his dissembling pretences of commonwealth principles, or, when he was (as it were) compelled to lay them aside, of insisting on rigorous limitations, to prevent any overtures from the council, who were almost entirely presbyterian, before the meeting of parliament, which would have considerably embarrassed the king's affairs.[3] The elections meantime had taken a course which the faction

"with many of whom I have spoken, pretend that, should the king come in upon any such insurrection, abetted by those of his own party, he would be more absolute than his father was in the height of his prerogative. Stay therefore, say they, till we are ready; our numbers so added will abundantly recompense the delay, rendering what is now extremely doubtful morally certain, and establishing his throne upon the true basis, liberty and property." July 16. 1659. Clar. State Papers, 527.

[1] Clar. Hist. of Rebellion, vii. 440. State Papers, 705. 729. "There is so insolent a spirit among some of the nobility," says Clarendon, about the middle of Feb. "that I really fear it will turn to an aristocracy; Monk inclining that way too. My opinion is clear that the king ought not to part with the church, crown, or friends' lands, lest he make my lord of Northumberland his equal, nay, perhaps his superior." P. 680.

[2] Downing, the minister at the Hague, was one of these. His overtures to the king were as early as Monk's, at the beginning of April; he declared his wish to see his majesty restored on good terms, though many were desirous to make him a doge of Venice. Carte's Letters, ii. 320. See also a remarkable letter of the king to Monk (dated May 21.; but I suspect he used the new style, therefore read May 11.), intimating what a service it would be to prevent the imposition of any terms. Clar. 745. And another from him to Morrice of the same tenor, May 20. (N. S.) 1660, and hinting that his majesty's friends in the house had complied with the general in all things, according to the king's directions, departing from their own sense, and restraining themselves from pursuing what they thought most for his service. Thurloe, vii. 912. This perhaps referred to the indemnity and other provisions then pending in the commons, or rather the delay of a few days before the delivery of sir J. Grenvil's message.

[3] "Monk came this day (about the first week of April) to the council, and assured them that, notwithstanding all the appearance of a general desire of kingly government, yet it was in no wise his sense, and that he would spend the last drop of his blood to maintain the con-

now in power by no means regarded with satisfaction. Though the late house of commons had passed a resolution, that no person who had assisted in any war against the parliament since 1642, unless he should since have manifested his good affection towards it, should be capable of being elected; yet this, even if it had been regarded, as it was not, by the people, would have been a feeble barrier against the royalist party, composed in a great measure of young men, who had grown up under the commonwealth, and of those who, living in the parliamentary counties during the civil war, had paid a reluctant obedience to its power.[1] The tide ran so strongly for the king's friends, that it was as much as the presbyterians could effect, with the weight of government in their hands, to obtain about an equality of strength with the cavaliers in the convention parliament.[2]

It has been a frequent reproach to the conductors of this great revolution, that the king was restored without those terms and limitations which might secure the nation against his abuse of their confidence; and this, not only by contemporaries who had suffered by the political and religious changes consequent on the restoration, or those who, in after times, have written with some prepossession against the English church and constitutional monarchy, but by the most temperate and reasonable men; so that it has become almost regular to cast on the convention parliament, and more especially on Monk, the imputation of having abandoned public liberty, and brought on, by their inconsiderate loyalty, or self-interested treachery, the misgovernment of the two last Stuarts, and the necessity of their ultimate expulsion. But as this is a very material part of our history, and those who pronounce upon it have not always a very distinct notion either of what was or what could have been done, it may be worth while to consider the matter somewhat more analytically; confining myself, it is to be observed, in the present chapter, to what took place before the king's personal assumption of the government on the 29th of May, 1660. The sub-

trary." Extract of a letter from Thurloe to Downing. Carte's Letters, ii. 322. "The council of state are utterly ignorant of Monk's treating with the king; and surely, as the present temper of the council of state is now, and may possibly be also of the parliament, by reason of the presbyterian influence upon both, I should think the first chapman will not be the worst, who perhaps will not offer so good a rate in conjunction with the company, as he may give to engross the commodity." Clar, 722. April 6. This sentence is a clue to all the intrigue. It is said soon afterwards (p. 726., April 11.) that the presbyterians were much troubled at the course of the elections, which made some of the council of state again address themselves to Monk for his consent to propositions they would send to the king; but he absolutely refused, and said he would leave all to a free parliament, as he had promised the nation. Yet, though the elections went as well as the royalists could reasonably expect, Hyde was dissatisfied that the king was not restored without the intervention of the new parliament; and this may have been one reason of his spleen against Monk. P. 726. 731.

[1] A proposed resolution, that those who had been on the king's side, *or their sons*, should be disabled from voting at elections, was lost by 93 to 56, the last effort of the expiring Rump. Journals, 13 March. The electors did not think themselves bound by this arbitrary exclusion of the cavaliers from parliament; several of whom (though not perhaps a great number within the terms of the resolution) were returned. Massey, however, having gone down to stand for Glocester, was put under arrest by order of the council of state. Thurloe, 887. Clarendon, who was himself not insensible to that kind of superstition, had fancied that any thing done at Glocester by Massey for the king's service would make a powerful impression on the people.

[2] It is a curious proof of the state of public sentiment, that, though Monk himself wrote a letter to the electors of Bridgenorth, recommending Thurloe, the cavalier party was so powerful, that his friends did not even produce the letter, lest it should be treated with neglect. Thurloe, vii. 895.

sequent proceedings of the convention parliament fall within another period.

We may remark, in the first place, that the unconditional restoration of Charles the Second is sometimes spoken of in too hyperbolical language, as if he had come in as a sort of conqueror, with the laws and liberties of the people at his discretion. Yet he was restored to nothing but the bounded prerogatives of a king of England; bounded by every ancient and modern statute, including those of the long parliament, which had been enacted for the subjects' security. If it be true, as I have elsewhere observed, that the long parliament, in the year 1641, had established, in its most essential parts, our existing constitution, it can hardly be maintained that fresh limitations and additional securities were absolutely indispensable, before the most fundamental of all its principles, the government by king, lords, and commons, could be permitted to take its regular course. Those who so vehemently reprobate the want of conditions at the restoration would do well to point out what conditions should have been imposed, and what mischiefs they can probably trace from their omission.[1] They should be able also to prove that, in the circumstances of the time, it was quite as feasible and convenient to make certain secure and obligatory provisions the terms of the king's restoration, as seems to be taken for granted.

The chief presbyterians appear to have considered the treaty of Newport, if not as fit to be renewed in every article, yet at least as the basis of the compact into which they were to enter with Charles.[2] But were the concessions wrested in his treaty from his father, in the hour of peril and necessity, fit to become the permanent rules of the English constitution? Turn to the articles prescribed by the long parliament in that negotiation. Not to mention the establishment of a rigorous presbytery in the church, they had insisted on the exclusive command of all forces by land and sea for twenty years, with the sole power of levying and expending the monies necessary for their support; on the nomination of the principal officers of state, and of the judges during the same period; and on the exclusion of the king's adherents from all trust or political power. Admit even that the insincerity and arbitrary principles of Charles the First had rendered necessary such extraordinary precautions, was it to be supposed that the executive power should not revert to his successor? Better it were, beyond comparison, to maintain the perpetual exclusion of his family, than to mock them with such a titular crown, the certain cause of discontent and intrigue, and to mingle premature distrust with their professions of affection. There was undoubtedly much to apprehend from the king's restoration; but it might be expected, that a steady regard for public liberty in the parliament and the nation would obviate that danger without any momentous change of the constitu-

[1] "To the king's coming in without conditions may be well imputed all the errors of his reign." Thus says Burnet. The great political error, if so it should be termed, of his reign, was a conspiracy with the king of France, and some wicked advisers at home, to subvert the religion and liberty of his subjects; and it is difficult to perceive by what conditions this secret intrigue could have been prevented.

[2] Clar. Papers, p. 729. They resolved to send the articles of that treaty to the king, leaving out the preface. This was about the middle of April.

tion ; or that if such a sentiment should prove unhappily too weak, no guarantees of treaties or statutes would afford a genuine security.

If, however, we were to be convinced that the restoration was effected without a sufficient safeguard against the future abuses of royal power, we must still allow, on looking attentively at the circumstances, that there were very great difficulties in the way of any stipulations for that purpose. It must be evident, that any formal treaty between Charles and the English government, as it stood in April, 1660, was inconsistent with their common principle. That government was, by its own declarations, only de facto, only temporary ; the return of the secluded members to their seats, and the votes they subsequently passed, held forth to the people that every thing done since the force put on the house in December, 1648, was by an usurpation ; the restoration of the ancient monarchy was implied in all recent measures, and was considered as out of all doubt by the whole kingdom. But between a king of England and his subjects no treaty, as such, could be binding ; there was no possibility of entering into stipulations with Charles, though in exile, to which a court of justice would pay the slightest attention, except by means of acts of parliament. It was doubtless possible that the council of state might have entered into a secret agreement with him on certain terms, to be incorporated afterwards into bills, as at the treaty of Newport. But at that treaty his father, though in prison, was the acknowledged sovereign of England ; and it is manifest that the king's recognition must precede the enactment of any law. It is equally obvious that the contracting parties would no longer be the same, and that the conditions that seemed indispensable to the council of state might not meet with the approbation of parliament. It might occur to an impatient people, that the former were not invested with such legal or permanent authority as could give them any pretext for bargaining with the king, even in behalf of public liberty.

But, if the council of state, or even the parliament on its first meeting, had resolved to tender any hard propositions to the king, as the terms, if not of his recognition, yet of his being permitted to exercise the royal functions, was there not a possibility that he might demur about their acceptance, that a negotiation might ensue to procure some abatement, that in the interchange of couriers between London and Brussels, some weeks at least might be whiled away ? Clarendon, we are sure, inflexible and uncompromising as to his master's honour, would have dissuaded such enormous sacrifices as had been exacted from the late king. And during this delay, while no legal authority would have subsisted, so that no officer could have collected the taxes or executed process without liability to punishment, in what a precarious state would the parliament have stood ! On the one hand, the nation almost maddened with the intoxication of reviving loyalty, and rather prone to cast at the king's feet the privileges and liberties it possessed, than to demand fresh security for them, might insist upon his immediate return, and impair the authority of parliament. On the other hand, the army, desperately irreconcilable to the name of Stuart, and sullenly resisting the hypocrisy that had deluded them, though they knew no longer where to seek a leader, were accessible to the furious common-

wealth's men, who, rushing as it were with lighted torches along their ranks, endeavoured to rekindle a fanaticism that had not quite consumed its fuel. (Life of Clarendon, p. 10.) The escape of Lambert from the Tower had struck a panic into all the kingdom; some such accident might again furnish a rallying point for the disaffected, and plunge the country into an unfathomable abyss of confusion. Hence the motion of sir Matthew Hale, in the convention parliament, to appoint a committee, who should draw up propositions to be sent over for the king's acceptance, does not appear to me well timed and expedient; nor can I censure Monk for having objected to it.[1] The business in hand required greater dispatch. If the king's restoration was an essential blessing, it was not to be thrown away in the debates of a committee. A wary, scrupulous, conscientious English lawyer, like sir Matthew Hale, is always wanting in the rapidity and decision necessary for revolutions, though he may be highly useful in preventing them from going too far.

It is, I confess, more probable that the king would have accepted almost any conditions tendered to him; such at least would have been the advice of most of his counsellors; and his own conduct in Scotland was sufficient to show how little any sense of honour or dignity would have stood in his way. But on what grounds did his English friends, nay, some of the presbyterians themselves, advise his submission, to the dictates of that party? It was in the expectation that the next free parliament, summoned by his own writ, would undo all this work of stipulation, and restore him to an unfettered prerogative. And this expectation there was every ground, from the temper of the nation, to entertain. Unless the convention parliament had bargained for its own perpetuity, or the privy council had been made immovable, or a military force, independent of the crown, had been kept up to overawe the people,—all of them most unconstitutional and abominable usurpations,—there was no possibility of maintaining the conditions, whatever they might have been, from the want of which so much mischief is fancied to have sprung. Evils did take place, dangers did arise, the liberties of England were once more impaired; but these are far less to be ascribed to the actors in the restoration, than to the next parliament, and to the nation who chose it.

I must once more request the reader to take notice, that I am not here concerned with the proceedings of the convention parliament after the king's return to England, which, in some respects appear to me censurable; but discussing the question, whether they were guilty of any fault in not tendering bills of limitation on the prerogative, as preliminary conditions of his restoration to the exercise of his lawful authority. And it will be found, upon a review of what took place in that interregnum from their meeting together on the 25th of April, 1660, to Charles's arrival in London on the 29th of May, that they were less unmindful than has been sometimes supposed of provisions to secure the kingdom against the perils which had seemed to threaten it in the restoration.

[1] "This," says Burnet somewhat invidiously, "was the great service that Monk did: for as to the restoration itself, the tide ran so strong, that he only went into it dexterously enough to get much praise and great rewards." P. 123.

On the 25th of April, the commons met and elected Grimston, a moderate presbyterian, as their speaker, somewhat against the secret wish of the cavaliers, who, elated by their success in the elections, were beginning to aim at superiority, and to show a jealousy of their late allies.[1] On the same day, the doors of the house of lords were found open; and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval.[2] There was, however, a very delicate and embarrassing question, that had been much discussed in their private meetings. The object of these, as I have mentioned, was to impose terms on the king, and maintain the presbyterian ascendancy. But the peers of this party were far from numerous, and must be out-voted, if all the other lawful members of the house should be admitted to their privileges. Of these there were three classes. The first was of the peers who had come to their titles since the commencement of the civil war, and whom there was no colour of justice, nor any vote of the house to exclude. To some of these accordingly they caused letters to be directed; and the others took their seats without objection on the 26th and 27th of April, on the latter of which days thirty-eight peers were present. (Clar. St. Pap., 784. Lords' Journs.) The second class was of those who had joined Charles the First, and had been excluded from sitting in the house by votes of the long parliament. These it had been in contemplation among the presbyterian junto to keep out; but the glaring inconsistency of such a measure with the popular sentiment, and the strength that the first class had given to the royalist interest among the aristocracy, prevented them from insisting on it. A third class consisted of those who had been created since the great seal was taken to York in 1642; some by the late king, others by the present in exile; and these, according to the fundamental principle of the parliamentary side, were incapable of sitting in the house. It was probably one of the conditions on which some meant to insist, conformably to the articles of the treaty of Newport, that the new peers should be perpetually incapable; or even that none should in future have the right of voting, without the concurrence of both houses of parliament. An order was made therefore on May 4, that no lords created since 1642 should sit. This was vacated by a subsequent resolution of May 31.

A message was sent down to the commons on April 27., desiring a conference on the great affairs of the kingdom. This was the first time that word had been used for more than eleven years. But the commons, in returning an answer to this message, still employed the word nation. It was determined that the conference should take place on the ensuing Tuesday, the first of May.[3] In this conference, there

[1] Grimston was proposed by Pierrepoint, and conducted to the chair by him, Monk, and Hollis. Journ., Parl. Hist. The cavaliers complained that this was done before they came into the house, and that he was partial. Mordaunt to Hyde, April 27. Clar. St. Papers, 734.

[2] These were the earls of Manchester, Northumberland, Lincoln, Denbigh, and Suffolk; lords Saye, Wharton, Hunsdon, Grey, Maynard. Lords' Journs., April 25.

[3] "It was this day (April 27.) moved in the house of commons to call in the king; but it was deferred till Tues. next by the king's friends' consent, and then it is generally believed something will be done in it. The calling in of the king is now not doubted; but there is a party among the old secluded members, that would have the treaty grounded upon the Isle of Wight propositions; and the old lords are thought generally of that design. But it is believed the house of commons will use the king more gently. The general hath been highly complimented by both houses, and, without doubt, the giving the king easy or hard conditions

can be no doubt that the question of further securities against the power of the crown would have been discussed. But Monk, whether from conviction of their inexpedience, or to atone for his ambiguous delay, had determined to prevent any encroachment on the prerogative. He caused the king's letter to the council of state, and to the two houses of parliament, to be delivered on that very day. A burst of enthusiastic joy testified their long repressed wishes; and when the conference took place, the earl of Manchester was instructed to let the commons know that the lords do own and declare that, according to the ancient and fundamental laws of this kingdom, the government is and ought to be by king, lords, and commons. On the same day, the commons resolved to agree in this vote; and appointed a committee to report what pretended acts and ordinances were inconsistent with it. (Lords' and Com. Journ. Parl. Hist. iv. 24.)

It is however so far from being true that this convention gave itself up to a blind confidence in the king, that their journals during the month of May bear witness to a considerable activity in furthering provisions, which the circumstances appeared to require. They appointed a committee, on May 3rd, to consider of the king's letter and declaration, both holding forth, it will be remembered, all promises of indemnity, and every thing that could tranquillize apprehension, and to propose bills accordingly, especially for taking away military tenures. One bill was brought into the house, to secure lands purchased from the trustees of the late parliament; another, to establish ministers already settled in benefices; a third, for a general indemnity; a fourth, to take away tenures in chivalry and wardship; a fifth, to make void all grants of honour or estate, made by the late or present king since May 1642. Finally, on the very 29th of May, we find a bill read twice and committed, for the confirmation of privilege of parliament, magna charta, the petition of right, and other great constitutional statutes. (Com. Journ.) These measures, though some of them were never completed, prove that the restoration was not carried forward with so thoughtless a precipitancy and neglect of liberty as has been asserted.

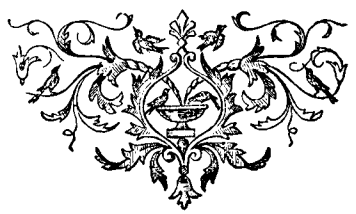
There was undoubtedly one very important matter of past controversy, which they may seem to have avoided, the power over the militia. They silently gave up that momentous question. Yet it was become, in a practical sense, incomparably more important that the representatives of the commons should retain a control over the land forces of the nation than it had been at the commencement of the controversy. War and usurpation had sown the dragon's teeth in our fields; and instead of the peaceable trained bands, of former ages, the citizen soldiers who could not be marched beyond their counties, we had a veteran army accustomed to tread upon the civil authority at the bidding of their superiors, and used alike to govern and obey. It

dependeth totally upon him; for, if he appear for the king, the affections of the people are so high for him, that no other authority can oppose him." H. Coventry to marquis of Ormond. Carte's Letters, ii. 328. Mordaunt confirms this. Those who moved for the king were colonel King and Mr. Finch, both decided cavaliers. It must have been postponed by the policy of Monk. What could Clarendon mean by saying (Hist. of Rebellion, vii. 478.) that "none had the courage, how loyal soever their wishes were, to mention his majesty?" This way of speaking has misled Hume. The king was as generally talked of as if he were on the throne.

seemed prodigiously dangerous to give up this weapon into the hands of our new sovereign. The experience of other countries as well as our own demonstrated that the public liberty could never be secure if a large standing army should be kept on foot or any standing army without consent of parliament. But this salutary restriction the convention parliament did not think fit to propose; and in this respect I certainly consider them as having stopped short of adequate security. It is probable that the necessity of humouring Monk, whom it was their first vote to constitute general of all the forces in the three kingdoms,[1] with the hope, which proved not vain, that the king himself would disband the present army whereon he could so little rely, prevented any endeavour to establish the control of parliament over the military power, till it was too late to withstand the violence of the cavaliers, who considered the absolute prerogative of the crown in that point the most fundamental article of their creed.

Of Monk himself it may, I think, be said that if his conduct in this revolution was not that of a high-minded patriot, it did not deserve all the reproach that has been so frequently thrown on it. No one can, without forfeiting all pretensions to have his own word believed, excuse his incomparable deceit and perjury; a masterpiece no doubt, as it ought to be reckoned by those who set at nought the obligations of veracity in public transactions, of that wisdom which is not from above. But in seconding the public wish for the king's restoration, a step which few perhaps can be so much in love with fanatical and tyrannous usurpation as to condemn, he seems to have used what influence he possessed, an influence by no means commanding, to render the new settlement as little injurious as possible to public and private interests. If he frustrated the scheme of throwing the executive authority into the hands of a presbyterian oligarchy, I for one, can see no great cause for censure; nor is it quite reasonable to expect that a soldier of fortune, inured to the exercise of arbitrary power, and exempt from the prevailing religious fanaticism which must be felt or despised, should have partaken a fervent zeal for liberty, as little congenial to his temperament as it was to his profession. He certainly did not satisfy the king even in his first promises of support, when he advised an absolute indemnity, and the preservation of actual interests in the lands of the crown and church. In the first debates on the bill of indemnity, when the case of the regicides came into discussion, he pressed for the smallest number of exceptions from pardon. And though his conduct after the king's return displayed his accustomed prudence, it is evident that, if he had retained great influence in the council, which he assuredly did not, he would have maintained as much as possible of the existing settlement in the church. The deepest stain on his memory is the production of Argyle's private letters on his trial in Scotland; nor indeed can Monk be regarded in any respect as an estimable man, though his prudence and success may entitle him, in the common acceptation of the word, to be reckoned a wise one.

[1] Lords' Journs., May 2. The house went into consideration how to settle the militia of this kingdom. A committee of twelve lords was appointed, and the commons were requested to appoint a proportionate number. But no bill was brought in till after the king's return



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THE

CONSTITUTIONAL HISTORY OF ENGLAND.

CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND TO THE FALL OF THE CABAL ADMINISTRATION.

Popular Joy at the Restoration—Proceedings of the Convention Parliament—Act of Indemnity—Exclusion of the Regicides and others—Discussions between the Houses on it—Execution of Regicides—Restitution of Crown and Church Lands—Discontent of the Royalists—Settlement of the Revenue—Abolition of Military Tenures—Excise granted instead—Army disbanded—Clergy restored to their Benefices—Hopes of the Presbyterians from the King—Projects for a Compromise—King's Declaration in Favour of it—Convention Parliament dissolved—Different Complexion of the next—Condemnation of Vane—Its Injustice—Acts replacing the Crown in its Prerogatives—Corporation Act—Repeal of Triennial Act—Star-chamber not restored—Presbyterians deceived by the King—Savoy Conference—Act of Uniformity—Ejection of Nonconformist Clergy—Hopes of the Catholics—Bias of the King towards them—Resisted by Clarendon and the Parliament—Declaration for Indulgence—Objected to by the Commons—Act against Conventicles—Another of the same kind—Remarks on them—Dissatisfaction increases—Private Life of the King—Opposition in Parliament—Appropriation of Supplies—Commission of Public Accounts—Decline of Clarendon's Power—Loss of the King's Favour—Coalition against him—His Impeachment—Some Articles of it not unfounded—Illegal Imprisonments—Sale of Dunkirk—Solicitation of French Money—His Faults as a Minister—His pusillanimous Flight—And consequent Banishment—Cabal Ministry—Scheme of Comprehension and Indulgence—Triple Alliance—Intrigue with France—King's Desire to be Absolute—Secret Treaty of 1670—Its Objects—Differences between Charles and Louis as to the Mode of its Execution—Fresh Severities against Dissenters—Dutch War—Declaration of Indulgence—Opposed by Parliament—And withdrawn—Test Act—Fall of Shaftesbury and his Colleagues.—pp. 501–561.

IT is universally acknowledged that no measure was ever more national, or has ever produced more testimonies of public approbation, than the restoration of Charles II. Nor can this be attributed to the usual fickleness of the multitude. For the late government, whether under the parliament or the protector, had never obtain d the sanction of popular consent, nor could have subsisted for a day without the support of the army. The king's return seemed to the eople the harbinger of a real liberty, instead of that bastard common ealth which had insulted them with its name; a liberty secure from enor-

mous assessments, which, even when lawfully imposed, the English had always paid with reluctance, and from the insolent despotism of the soldiery. The young and lively looked forward to a release from the rigours of fanaticism, and were too ready to exchange that hypocritical austerity of the late times for a licentiousness and impiety that became characteristic of the present. In this tumult of exulting hope and joy, there was much to excite anxious forebodings in calmer men; and it was by no means safe to pronounce that a change so generally demanded, and in most respects so expedient, could be effected without very serious sacrifices of public and particular interests.

Four subjects of great importance, and some of them very difficult, occupied the convention parliament from the time of the king's return till their dissolution in the following December; a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government; an adjustment of the claims for reparation which the crown, the church, and private royalists had to prefer; a provision for the king's revenue, consistent with the abolition of military tenures; and the settlement of the church. These were, in effect, the articles of a sort of treaty between the king and the nation, without some legislative provisions as to which, no stable or tranquil course of law could be expected.

The king, in his well-known declaration from Breda, dated the 14th of April, had laid down, as it were, certain bases of his restoration, as to some points which he knew to excite much apprehension in England. One of these was a free and general pardon to all his subjects, saving only such as should be excepted by parliament. It had always been the king's expectation, or at least that of his chancellor, that all who had been immediately concerned in his father's death should be delivered up to punishment (Life of Clarendon, p. 69.); and, in the most unpropitious state of his fortunes, while making all professions of pardon and favour to different parties, he had constantly excepted the regicides.[1] Monk, however, had advised in his first messages to the king, that none, or at most not above four, should be excepted on this account;[2] and the commons voted that not more than seven persons should lose the benefit of the indemnity, both as to life and estate. (Journals, May 14.) Yet after having named seven of the late king's judges, they proceeded in a few days to add several more, who had been concerned in managing his trial, or otherwise forward in promoting his death.[3] They went on to pitch upon twenty persons, whom, on account of their deep concern in the transactions of the last twelve years, they determined to affect with penalties, not extending to death, and to be determined by some future act of parliament.[4] As

[1] Clar. State Papers, iii. 427. 529. In fact, very few of them were likely to be of use; and the exception made his general offers appear more sincere.

[2] Clar. Hist. of Rebellion, vii. 447. Ludlow says, that Fairfax and Northumberland were positively against the punishment of the regicides, vol. iii. p. 10.; and that Monk vehemently declared at first against any exceptions, and afterwards prevailed on the house to limit them to seven, p. 16. Though Ludlow was not in England, this seems very probable, and is confirmed by other authority as to Monk. Fairfax, who had sat one day himself on the king's trial, could hardly with decency concur in the punishment of those who went on.

[3] June 5, 6, 7. The first seven were Scott, Holland, Lisle, Barkstead, Harrison, Saye, Jones. They went on to add Coke, Broughton, Dendy.

[4] These were Lenthall, Vane, Burton, Keble, St. John, Ireton, Haslerig, Sydenham, Desborough, Axtell, Lambert, Pack, Blackwell, Fleetwood, Pyne, Dean, Creed, Nye, Goodwin,

their passions grew warmer, and the wishes of the court became better known, they came to except from all benefit of the indemnity such of the king's judges as had not rendered themselves to justice according to the late proclamation.[1] In this state, the bill of indemnity and oblivion was sent up to the lords. (July 11.) But in that house, the old royalists had a more decisive preponderance than among the commons. They voted to except all who had signed the death-warrant against Charles the First, or sat when sentence was pronounced, and five others by name, Hacker, Vane, Lambert, Haslerig, and Axtell. They struck out, on the other hand, the clause reserving Lenthall and the rest of the same class for future penalties. They made other alterations in the bill to render it more severe;[2] and with these, after a pretty long delay, and a positive message from the king, requesting them to hasten their proceedings (an irregularity to which they took no exception, and which in the eyes of the nation was justified by the circumstances), they returned the bill to the commons.

The vindictive spirit displayed by the upper house was not agreeable to the better temper of the commons, where the presbyterian or moderate party retained great influence. Though the king's judges (such at least as had signed the death-warrant) were equally guilty, it was consonant to the practice of all humane governments to make a selection for capital penalties; and to put forty or fifty persons to death for that offence seemed a very sanguinary course of proceeding, and not likely to promote the conciliation and oblivion so much cried up. But there was a yet stronger objection to this severity. The king had published a proclamation, in a few days after his landing, commanding his father's judges to render themselves up within fourteen days, on pain of being excepted from any pardon or indemnity, either as to their lives or estates. Many had voluntarily come in, having put an obvious construction on this proclamation. It seems to admit of little question, that the king's faith was pledged to those persons, and that no advantage could be taken of any ambiguity in the proclamation, without as real perfidiousness as if the words had been more express. They were at least entitled to be set at liberty, and to have a reasonable time allowed for making their escape, if it were deter-

and Cobbet; some of them rather insignificant names. Upon the words that "twenty and no more" be so excepted, two divisions took place, 160 to 131, and 153 to 135; the presbyterians being the majority. June 8. Two other divisions took place on the names of Lenthall, carried by 215 to 126, and of Whitelock, lost by 175 to 134. Another motion was made afterwards against Whitelock by Prynne. Milton was ordered to be prosecuted separately from the twenty; so that they already broke their resolution. He was put in custody of the serjeant-at-arms and released, Dec. 17. Andrew Marvell, his friend, soon afterwards complained that fees to the amount of 150 pounds had been extorted from him; but Finch answered, that Milton had been Cromwell's secretary, and deserved hanging. Parl. Hist. p. 162. Lenthall had taken some share in the restoration, and entered into correspondence with the king's advisers a little before. Clarendon State Papers, iii. 711. 720. Kennet's Register, 762. But the royalists never could forgive his having put the question to the vote on the ordinance for trying the late king.

[1] June 30. This was carried without a division. Eleven were afterwards excepted by name, as not having rendered themselves. July 9.

[2] The worst and most odious of their proceedings, quite unworthy of a Christian and civilized assembly, was to give the next relations of the four peers who had been executed under the commonwealth, Hamilton, Holland, Capel, and Derby, the privilege of naming each one person (among the regicides) to be executed. This was done in the three last instances; but lord Denbigh, as Hamilton's kinsman, nominated one who was dead; and, on this being pointed out to him, refused to fix on another. Journ. Aug. 7. Ludlow, iii. 34.

mined to exclude them from the indemnity.[1] The commons were more mindful of the king's honour and their own than his nearest advisers.[2] But the violent royalists were gaining ground among them, and it ended in a compromise. They left Hacker and Axtell, who had been prominently concerned in the king's death, to their fate. They even admitted the exceptions of Vane and Lambert; contenting themselves with a joint address of both houses to the king, that, if they should be attainted, execution as to their lives might be remitted. Haslerig was saved, on a division of 141 to 116, partly through the intercession of Monk, who had pledged his word to him. Most of the king's judges were entirely excepted; but with a proviso in favour of such as had surrendered according to the proclamation, that the sentence should not be executed without a special act of parliament. (Stat. 12 Car. II. c. 11.) Others were reserved for penalties not extending to life, to be inflicted by a future act. About twenty enumerated persons, as well as those who had pronounced sentence of death in any of the late illegal high courts of justice, were rendered incapable of any civil or military office. Thus after three months' delay, which had given room to distrust the boasted clemency and forgiveness of the victorious royalists, the act of indemnity was finally passed.

Ten persons suffered death soon afterwards for the murder of Charles the First; and three more who had been seized in Holland, after a considerable lapse of time.[3] There can be no reasonable ground for censuring either the king or the parliament for their punishment; except that Hugh Peters, though a very odious fanatic, was not so directly implicated in the king's death as many who escaped; and the execution of Scrope, who had surrendered under the proclamation, was an inexcusable breach of faith.[4] But nothing can be more sophistical than to pretend that such men as Hollis and Annesley, who had been expelled from parliament by the violence of

[1] Lord Southampton, according to Ludlow, actually moved this in the house of lords, but was opposed by Finch, iii. 43.

[2] Clarendon uses some shameful chicanery about this. Life, p. 69.; and with that inaccuracy, to say the least, so habitual to him, says, "the parliament had published a proclamation, that all who did not render themselves by a day named should be judged as guilty, and attainted of treason." The proclamation was published by the king, on the suggestion indeed of the lords and commons, and the expressions were what I have stated in the text. State Trials, v. 959. Somers Tracts, vii. 437. It is obvious that by this misrepresentation he not only throws the blame of ill faith off the king's shoulders, but puts the case of those who obeyed the proclamation on a very different footing. The king it seems, had always expected that none of the regicides should be spared. But why did he publish such a proclamation? Clarendon, however, seems to have been against the other exceptions from the bill of indemnity, as contrary to some expressions in the declaration from Breda, which had been inserted by Monk's advice; and thus wisely and honourably got rid of the twenty exceptions which had been sent up from the commons, p. 133. The lower house resolved to agree with the lords as to those 20 persons, or rather 16 of them, by 197 to 102, Hollis and Morrice telling the Ayes.

[3] These were, in the first instance, Harrison, Scott, Scrope, Jones, Clement, Carew, all of whom had signed the warrant, Cook, the solicitor at the high court of justice, Hacker and Axtell, who commanded the guard on that occasion, and Peters. Two years afterwards, Downing, ambassador in Holland, prevailed on the states to give up Barkstead, Corbet, and Okey. They all died with great constancy, and an enthusiastic persuasion of the righteousness of their cause. State Trials.

Pepys says in his Diary, 13th Oct., 1660, of Harrison, whose execution he witnessed, that "he looked as cheerful as any man could do in that condition."

[4] It is remarkable, that Scrope had been so particularly favoured by the convention parliament, as to be exempted, together with Hutchinson and Lascelles, from any penalty or forfeiture by a special resolution. June 9. But the lords put in his name again, though they pointedly excepted Hutchinson; and the commons, after first resolving that he should only

the same faction who put the king to death, were not to vote for their punishment, or to sit in judgment on them, because they had sided with the commons in the civil war.[1] It is mentioned by many writers, and in the Journals, that when Mr. Lenthall, son of the late speaker, in the very first days of the convention parliament, was led to say that those who had levied war against the king were as blamable as those who had cut off his head, he received a reprimand from the chair, which the folly and dangerous consequence of his position well deserved; for such language, though it seems to have been used by him in extenuation of the regicides, was quite in the tone of the violent royalists. (Com. Journs., May 12. 1660.)

A question, apparently far more difficult, was that of restitution and redress. The crown lands, those of the church, the estates in certain instances of eminent royalists, had been sold by the authority of the late usurpers; and that not at very low rates, considering the precariousness of the title. This naturally seemed a material obstacle to the restoration of ancient rights, especially in the case of ecclesiastical corporations, whom men are commonly less disposed to favour than private persons. The clergy themselves had never expected that their estates would revert to them in full propriety: and would probably have been contented, at the moment of the king's return, to have granted easy leases to the purchasers. Nor were the house of commons, many of whom were interested in these sales, inclined to let in the former owners without conditions. A bill was accordingly brought into the house at the beginning of the session to confirm sales, or to give indemnity to the purchasers. I do not find its provisions more particularly stated. The zeal of the royalists soon caused the crown lands to be excepted. (Parl. Hist. iv. 80.) But the house adhered to the principle of composition as to ecclesiastical property, and kept the bill a long time in debate. At the adjournment in September, the chancellor told them, his majesty had thought much upon the business, and done much for the accommodation of many particular persons, and doubted not but that before they met again a good progress would be made, so that the persons concerned would be much to blame if they received not full satisfaction; promising also to advise with some of the commons as to that settlement. (Parl. Hist. iv. 129.) These expressions indicate a design to take the matter out of the hands of parliament. For it was Hyde's firm resolution to replace the church in the whole of its property, without any other regard to the actual

pay a fine of one year's value of his estate, came at last to agree in excepting him from the indemnity as to life. It appears that some private conversation of Scrope had been betrayed, wherein he spoke of the king's death as he thought.

As to Hutchinson, he had certainly concurred in the restoration, having an extreme dislike to the party who had turned out the parliament in Oct. 1659, especially Lambert. This may be inferred from his conduct, as well as by what Ludlow says, and Kennet in his Register, p. 169. His wife puts a speech into his mouth as to his share in the king's death, not absolutely justifying it, but, I suspect, stronger than he ventured to use. At least, the commons voted that he should not be excepted from the indemnity, "on account of his signal repentance," which could hardly be predicated of the language she ascribes to him. Compare Mrs. Hutchinson's Memoirs, p. 367., with Commons' Journals, June 9.

[1] Horace Walpole, in his Catalogue of Noble Authors, has thought fit to censure both these persons for their pretended inconsistency. The case is, however, different as to Monk and Cooper; and perhaps it may be thought, that men of more delicate sentiments than either of these possessed would not have sat upon the trial of those with whom they had long professed to act in concert, though innocent of their crime.

possessors than the right owners should severally think it equitable to display. And this, as may be supposed, proved very small. No further steps were taken on the meeting of parliament after the adjournment; and by the dissolution the parties were left to the common course of law. The church, the crown, the dispossessed royalists, re-entered triumphantly on their lands; there were no means of repelling the owners' claim, nor any satisfaction to be looked for by the purchasers under so defective a title. It must be owned that the facility with which this was accomplished is a striking testimony to the strength of the new government, and the concurrence of the nation. This is the more remarkable, if it be true, as Ludlow informs us, that the chapter lands had been sold by the trustees appointed by parliament at the clear income of fifteen or seventeen years' purchase.[1]

The great body however of the suffering cavaliers, who had compounded for their delinquency under the ordinances of the Long Parliament, or whose estates had been for a time in sequestration, found no remedy for these losses by any process of law. The act of indemnity put a stop to any suits they might have instituted against persons concerned in carrying these illegal ordinances into execution. They were compelled to put up with their poverty, having the additional mortification of seeing one class, namely the clergy, who had been engaged in the same cause, not the same in their fortune, and many even of the vanquished republicans undisturbed in wealth which, directly or indirectly, they deemed acquired at their own expense.[2] They called the statute an act of indemnity for the king's enemies, and of oblivion for his friends. They murmured at the ingratitude of Charles, as if he were bound to forfeit his honour and risk his throne for their sakes. They conceived a deep hatred of Clarendon, whose steady adherence to the great principles of the act of indemnity is the most honourable act of his public life. And the discontent engendered by their disappointed hopes led to some part of the opposition afterwards experienced by the king, and still more certainly to the coalition against the minister.

No one cause had so eminently contributed to the dissensions between the crown and parliament in the two last reigns, as the disproportion between the public revenues under a rapidly increasing depreciation in the value of money, and the exigencies, at least on some occasions, of the administration. There could be no apology for the parsimonious reluctance of the commons to grant supplies, except the constitutional necessity of rendering them the condition of

[1] Memoirs, p. 229. It appears by some passages in the Clarendon Papers, that the church had not expected to come off so brilliantly; and, while the restoration was yet unsettled, would have been content to give leases of their lands. P. 620. 723. Hyde, however, was convinced that the church would be either totally ruined, or restored to a great lustre; and herein he was right, as it turned out. P. 614.

[2] Life of Clarendon, 99. L'Estrange, in a pamphlet printed before the end of 1660, complains that the cavaliers were neglected, the king betrayed, the creatures of Cromwell, Bradshaw, and St. John laden with offices and honours. Of the indemnity he says, "That act made the enemies to the constitution masters in effect of the booty of three nations, bating the crown and church lands, all which they might now call their own; while those who stood up for the laws were abandoned to the comfort of an irreparable but honourable ruin." He reviles the presbyterian ministers still in possession, and tells the king that misplaced lenity was his father's ruin. Kennet's Register, p. 233. See too in Somers Tracts, vii. 517., "The Humble Representation of the Sad Condition of the King's Party." Also, p. 557.

redress of grievances; and in the present circumstances, satisfied, as they seemed at least to be, with the securities they had obtained, and enamoured of their new sovereign, it was reasonable to make some further provision for the current expenditure. Yet this was to be meted out with such prudence as not to place him beyond the necessity of frequent recurrence to their aid. A committee was accordingly appointed "to consider of settling such a revenue on his majesty as may maintain the splendour and grandeur of his kingly office, and preserve the crown from want, and from being undervalued by his neighbours." By their report it appeared that the revenue of Charles I. from 1637 to 1641 had amounted on an average to about 900,000*l.*, of which full 200,000*l.* arose from sources either not warranted by law or no longer available. The house resolved to raise the present king's income to 1,200,000*l.* per annum; a sum perhaps sufficient in those times for the ordinary charges of government. But the funds assigned to produce this revenue soon fell short of the parliament's calculation.[1]

One ancient fountain that had poured its stream into the royal treasury, it was now determined to close up for ever. The feudal tenures had brought with them at the conquest, or not long after, those incidents, as they were usually called, or emoluments of signiory, which remained after the military character of fiefs had been nearly effaced; especially the right of detaining the estates of minors holding in chivalry, without accounting for the profits. This galling burthen, incomparably more ruinous to the tenant than beneficial to the lord, it had long been determined to remove. Charles, at the treaty of Newport, had consented to give it up for a fixed revenue of 100,000*l.*; and this was almost the only part of that ineffectual compact which the present parliament were anxious to complete. The king, though likely to lose much patronage and influence, and what passed with lawyers for a high attribute of his prerogative, could not decently refuse a commutation so evidently advantageous to the aristocracy. No great difference of opinion subsisting as to the expediency of taking away military tenures, it remained only to decide from what resources the commutation revenue should spring. Two schemes were suggested; the one, a permanent tax on lands held in chivalry (which, as distinguished from those in socage, were alone liable to the feudal burthens); the other, an excise on beer and some other liquors. It is evident that the former was founded on a just principle; while the latter transferred a particular burthen to the community. But the self-interest which so unhappily predominates even in representative assemblies, with the aid of the courtiers who knew that an excise increasing with the riches of the country was far more desirable for the crown than a fixed land-tax, caused the former to be carried, though by the very small majority of two voices. (21 Nov. 1660, 151 to 149. Parl. Hist.) Yet even thus, if the impoverishment of the gentry, and dilapidation of their estates through the detestable abuses of wardship was, as cannot be doubted, enormously mischievous to the

[1] Com. Journ. Sept. 4. 1660. Sir Philip Warwick, chancellor of the exchequer, assured Pepys that the revenue fell short by a fourth of the 1,200,000*l.* voted by parliament. See his Diary, Mar. 1. 1664. Ralph, however, says, the income in 1662 was 1,120,593*l.*, though the expenditure was 1,439,000*l.* P. 88. It appears probable, that the hereditary excise did not yet produce much beyond its estimate. Id. p. 20.

inferior classes, the whole community must be reckoned gainers by the arrangement, though it might have been conducted in a more equitable manner. The statute 12 Car. II. c. 24 takes away the court of wards, with all wardships and forfeitures for marriage by reason of tenure, all primer seisins, and fines for alienation, aids, escuages, homages, and tenures by chivalry without exception, save the honorary services of grand sergeantry; converting all such tenures into common socage. The same statute abolishes those famous rights of purveyance and pre-emption, the fruitful theme of so many complaining parliaments; and this relief of the people from a general burthen may serve in some measure as an apology for the imposition of the excise. This act may be said to have wrought an important change in the spirit of our constitution, by reducing what is emphatically called the prerogative of the crown, and which, by its practical exhibition in these two vexatious exercises of power, kept up in the minds of the people a more distinct perception, as well as more awe, of the monarchy, than could be felt in later periods, when it has become, as it were, merged in the common course of law, and blended with the very complex mechanism of our institutions. This great innovation however is properly to be referred to the revolution of 1641, which put an end to the court of star-chamber, and suspended the feudal superiorities. Hence, with all the misconduct of the two last Stuarts, and all the tendency towards arbitrary power that their government often displayed, we must perceive that the constitution had put on, in a very great degree, its modern character during that period; the boundaries of prerogative were better understood; its pretensions, at least in public, were less enormous; and not so many violent and oppressive, certainly not so many illegal, acts were committed towards individuals as under the two first of their family.

In fixing upon 1,200,000*l.* as a competent revenue for the crown, the commons tacitly gave it to be understood, that a regular military force was not among the necessities for which they meant to provide. They looked upon the army, notwithstanding its recent services, with that apprehension and jealousy, which becomes an English house of commons. They were still supporting it by monthly assessments of 70,000*l.*, and could gain no relief by the king's restoration, till that charge came to an end. A bill, therefore, was sent up to the lords before their adjournment in September, providing money for disbanding the land forces. This was done during the recess; the soldiers received their arrears with many fair words of praise, and the nation saw itself, with delight and thankfulness to the king, released from its heavy burthens and the dread of servitude.[1] Yet Charles had too much knowledge of foreign countries, where monarchy flourished in all its plenitude of sovereign power, under the guardian sword of a standing army, to part readily with so favourite an instrument of kings. Some of his counsellors, and especially the duke of York, dissuaded him from disbanding the army, or at least advised his supplying its place by another. The unsettled state of the kingdom after so momentous a revolution, the dangerous audacity of the fanatical party,

[1] The troops disbanded were fourteen regiments of horse and eighteen of foot in England; one of horse and four of foot in Scotland, besides garrions. Journals, Nov. 7.

whose enterprises were the more to be guarded against, that they were founded on no such calculation, as reasonable men would form, and of which the insurrection of Venner, in November, 1660, furnished an example, did undoubtedly appear a very plausible excuse for something more of a military protection to the government than yeomen of the guard, and gentlemen pensioners. General Monk's regiment, called the Coldstream, and one other of horse, were accordingly retained by the king in his service; another was formed out of troops brought from Dunkirk; and thus began, under the name of guards, the present regular army of Great Britain.[1] In 1662 these amounted to about 5000 men; a petty force according to our present notions, or to the practice of other European monarchies in that age, yet sufficient to establish an alarming precedent, and to open a new source of contention between the supporters of power and those of freedom.

So little essential innovation had been effected by twenty years' interruption of the regular government in the common law or course of judicial proceedings, that when the king and house of lords were restored to their places, little more seemed to be requisite than a change of names. But what was true of the state could not be applied to the church. The revolution there had gone much farther, and the questions of restoration and compromise were far more difficult.

It will be remembered, that such of the clergy as steadily adhered to the episcopal constitution had been expelled from their benefices by the Long Parliament under various pretexts, and chiefly for refusing to take the covenant. The new establishment was nominally presbyterian. But the presbyterian discipline and synodical government were very partially introduced; and, upon the whole, the church, during the suspension of the ancient laws, was rather an assemblage of congregations than a compact body, having little more unity than resulted from their common dependency on the temporal magistrate. In the time of Cromwell, who favoured the independent sectaries, some of that denomination obtained livings; but very few, I believe, comparatively, who had not received either episcopal or presbyterian ordination. The right of private patronage to benefices, and that of tithes, though continually menaced by the more violent party, subsisted without alteration. Meanwhile the episcopal ministers, though excluded from legal toleration along with papists, by the instrument of government under which Cromwell professed to hold his power, obtained, in general, a sufficient indulgence for the exercise of their function. (Neal, 429. 444.) Once indeed, on discovery of the royalist conspiracy in 1655, he published a severe ordinance, forbidding every ejected minister or fellow of a college to act as domestic chaplain, or schoolmaster. But this was coupled with a promise to show as much tenderness as might consist with the safety of the nation towards such of the said persons as should give testimony of their good affection to the government; and, in point of fact, this ordinance was so far from being rigorously observed, that episcopalian conventicles were openly kept in London.[2] Cromwell was of a really tolerant disposition, and

[1] Ralph, 35. Life of James, Grose's Military Antiquities, i. 61.

[2] Neal, 471. Pepys's Diary, ad init. Even in Oxford, about 300 episcopalians used to meet every Sunday with the connivance of Dr Owen, dean of Christ Church. Orme's Life of

there had perhaps, on the whole, been no period of equal duration wherein the catholics themselves suffered so little molestation as under the protectorate.[1] It is well known that he permitted the settlement of Jews in England, after an exclusion of nearly three centuries, in spite of the denunciations of some bigoted churchmen and lawyers.

The presbyterian clergy, though co-operating in the king's restoration, experienced very just apprehensions of the church they had supplanted; and this was in fact one great motive of the restrictions that party was so anxious to impose on him. His character and sentiments were yet very imperfectly known in England; and much pains were taken on both sides, by short pamphlets, panegyrical or defamatory, to represent him as the best Englishman and best protestant of the age, or as one given up to profligacy and popery.[2] The caricature likeness was, we must now acknowledge, more true than the other; but at that time it was fair and natural to dwell on the more pleasing picture. The presbyterians remembered that he was what they called a covenanted king; that is, that for the sake of the assistance of the Scots, he had submitted to all the obligations, and taken all the oaths, they thought fit to impose.[3] But it was well known that on the failure of those prospects he had returned to the church of England, and that he was surrounded by its zealous adherents. Charles, in his declaration from Breda, promised to grant liberty of conscience, so that no man should be disquieted or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom, and to consent to such acts of parliament as should be offered for him for confirming that indulgence. But he was silent as to the church establishment; and the presbyterian ministers, who went over to present the congratulations of their body, met with civil language, but no sort of encouragement to expect any personal compliance on the king's part with their mode of worship.

The moderate party in the convention parliament, though not absolutely of the presbyterian interest, saw the danger of permitting an

Owen, 188. It is somewhat bold in Anglican writers to complain, as they now and then do, of the persecution they suffered at this period, when we consider what had been the conduct of the bishops before, and what it was afterwards. I do not know that any member of the church of England was imprisoned under the commonwealth, except for some political reason: certain it is that the gaols were not filled with them.

[1] The penal laws were comparatively dormant, though two priests suffered death, one of them before the protectorate. Butler's Mem. of Catholics, ii. 13. But in 1655 Cromwell issued a proclamation for the execution of these statutes; which seems to have been provoked by the prosecution of the Vaudois. Whitelocke tells us he opposed it, 625. It was not acted upon.

[2] Several of these appear in Somers Tracts, vol. vii. The king's nearest friends were of course not backward in praising him, though a little at the expense of their consciences. "In a word," says Hyde to a correspondent in 1659, "if being the best protestant and the best Englishman of the nation can do the king good at home, he must prosper with and by his own subjects." Clar. State Papers, 541. Morley says he had been to see judge Hale, who asked him questions about the king's character and firmness in the protestant religion. Id. 736. Morley's exertions to dispossess men of the notion that the king and his brother were inclined to popery are also mentioned by Kennet, in his Register, 818.: a book containing very copious information as to this particular period. Yet Morley could hardly have been without strong suspicions as to both of them.

[3] He had written in the cipher to secretary Nicholas, from St. Johnston's, Sept. 3. 1650, the day of the battle of Dunbar, "Nothing could have confirmed me more to the church of England than being here, seeing their hypocrisy." Supplement to Evelyn's Diary, 133. The whole letter shows that he was on the point of giving his new friends the slip: as indeed he attempted soon after, in what was called the Start. Laing, iii. 403.

oppressed body of churchmen to regain their superiority without some restraint. The actual incumbents of benefices were on the whole a respectable and even exemplary class, most of whom could not be reckoned answerable for the legal defects of their title. But the ejected ministers of the Anglican church, who had endured for their attachment to its discipline, and to the crown, so many years of poverty and privation, stood in a still more favourable light, and had an evident claim to restoration. The commons accordingly, before the king's return, prepared a bill for confirming and restoring ministers; with the twofold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy who by ejection or forced surrender had made way for intruders, and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies.[1] This act did not pass without opposition of the cavaliers, who panted to retaliate the persecution that had afflicted their church.[2]

This legal security, however, for the enjoyment of their livings gave no satisfaction to the scruples of conscientious men. The episcopal discipline, the Anglican liturgy, and ceremonies having never been abrogated by law, revived of course with the constitutional monarchy; and brought with them all the penalties that the act of uniformity and other statutes had inflicted. The nonconforming clergy threw themselves on the king's compassion, or gratitude, or policy, for relief. The independents, too irreconcilable to the established church for any scheme of comprehension, looked only to that liberty of conscience which the king's declaration from Breda had held forth.[3] But the presbyterians soothed themselves with hopes of retaining their benefices by some compromise with their adversaries. They had never, generally speaking, embraced the rigid principles of the Scottish clergy, and were willing to admit what they called a moderate episcopacy. They offered, accordingly, on the king's request to know their terms, a middle scheme, usually denominated Bishop Usher's Model; not as altogether approving it, but because they could not hope for any thing nearer to their own views. This consisted, first, in the appointment of a suffragan bishop for each rural deanery, holding a monthly synod of the presbyters within his district; and, secondly, in an annual diocesan synod of suffragans and representatives of the presbyters, under the presidency of the bishop, and deciding upon all matters before them by

[1] Car. II. c. 17. It is quite clear that an usurped possession was confirmed by this act, where the lawful incumbent was dead; though Burnet intimates the contrary.

[2] Parl. Hist. 94. The chancellor, in his speech to the houses at their adjournment in September, gave them to understand that this bill was not quite satisfactory to the court, who preferred the confirmation of ministers by particular letters patent under the great seal; that the king's prerogative of dispensing with acts of parliament might not grow into disuse. Many got the additional security of such patents; which proved of service to them, when the next parliament did not think fit to confirm this important statute. Baxter says, p. 241., some got letters patent to turn out the possessors, where the former incumbents were dead. These must have been to benefices in the gift of the crown; in other cases, letters patent could have been of no effect. I have found this confirmed by the Journals, Aug. 27. 1660.

[3] Upon Venner's insurrection, though the sectaries, and especially the independents, published a declaration of their abhorrence of it, a pretext was found for issuing a proclamation to shut up the conventicles of the anabaptists and quakers, and so worded as to reach all others. Kennet's Register, 357.

plurality of suffrages.[1] This is, I believe, considered by most competent judges as approaching more nearly than our own system to the usage of the primitive church, which gave considerable influence and superiority of rank to the bishop, without destroying the aristocratical character and co-ordinate jurisdiction of the ecclesiastical senate.[2] It lessened also the inconveniences supposed to result from the great extent of some English dioceses. But though such a system was inconsistent with that parity which the rigid presbyterians maintained to be indispensable, and those who espoused it are reckoned, in a theological division, among episcopalians, it was, in the eyes of equally rigid churchmen, little better than a disguised presbytery, and a real subversion of the Anglican hierarchy. (Baxter's Life. Neal.)

The presbyterian ministers, or rather a few eminent persons of that class, proceeded to solicit a revision of the liturgy, and a consideration of the numerous objections which they made to certain passages, while they admitted the lawfulness of a prescribed form. They implored the king also to abolish, or at least not to enjoin as necessary, some of those ceremonies which they scrupled to use, and which in fact had been the original cause of their schism; the surplice, the cross in baptism, the practice of kneeling at the communion, and one or two more. A tone of humble supplication pervades all their language, which some might invidiously contrast with their unbending haughtiness in prosperity. The bishops and other Anglican divines, to whom their propositions were referred, met the offer of capitulation with a scornful and vindictive smile. They held out not the least overture towards a compromise.

The king, however, deemed it expedient, during the continuance of a parliament, the majority of whom were desirous of union in the church, and had given some indications of their disposition,[3] to keep up the delusion a little longer, and prevent the possible consequences of

[1] Collier, 869. 871.; Baxter, 232. 238. The bishops said, in their answer to the presbyterians' proposals, that the objections against a single person's administration in the church were equally applicable to the state. Collier, 872. But this was false, as they well knew, and designed only to produce an effect at court; for the objections were not grounded on reasoning, but on a presumed positive institution. Besides which, the argument cut against themselves: for, if the English constitution, or something analogous to it, had been established in the church, their adversaries would have had all they *now* asked.

[2] Stillingfleet's Irenicum King's Inquiry into the Constitution of the Primitive Church. The former work was published at this time, with a view to moderate the pretensions of the Anglican party, to which the author belonged, by showing; 1. That there are no sufficient data for determining with certainty the form of church-government in the apostolical age, or that which immediately followed it; 2. That, as far as we may probably conjecture, the primitive church was framed on the model of the synagogue; that is, a synod of priests in every congregation, having one of their own number for a chief or president; 3. That there is no reason to consider any part of the apostolical discipline as an invariable model for future ages, and that much of our own ecclesiastical polity cannot any way pretend to primitive authority; 4. That this has been the opinion of all the most eminent theologians at home and abroad; 5. That it would be expedient to introduce various modifications, not on the whole much different from the scheme of Usher. Stillingfleet, whose work is a remarkable instance of extensive learning and mature judgment at the age of about twenty-three, thought fit afterwards to retract it in a certain degree; and towards the latter part of his life gave in to more high-church politics. It is true that the Irenicum must have been composed with almost unparalleled rapidity for such a work; but it shows, as far as I can judge, no marks of precipitancy. The biographical writers put its publication in 1659; but this must be a mistake; no one can avoid perceiving that it could not have passed the press on the 24th of Mar. 1660.

[3] They addressed the king to call such divines as he should think fit, to advise with concerning matters of religion. July 20. 1660. Journ. and Parl. Hist

despair. He had already appointed several presbyterian ministers his chaplains, and given them frequent audiences. But during the recess of parliament he published a declaration, wherein, after some compliments to the ministers of the presbyterian opinion, and an artful expression of satisfaction that he had found them no enemies to episcopacy or a liturgy, as they had been reported to be, he announces his intention to appoint a sufficient number of suffragan bishops in the larger dioceses; he promises that no bishop should ordain or exercise any part of his spiritual jurisdiction without advice and assistance of his presbyters; that no chancellors or officials of the bishops should use any jurisdiction over the ministry, nor any archdeacon without the advice of a council of his clergy; that the dean and chapter of the diocese, together with an equal number of presbyters, annually chosen by the clergy, should be always advising and assisting at all ordinations, church censures, and other important acts of spiritual jurisdiction. He declared also that he would appoint an equal number of divines of both persuasions to revise the liturgy; desiring that in the mean time none would wholly lay it aside, yet promising that no one should be molested for not using it till it should be reviewed and reformed. With regard to ceremonies, he declared that none should be compelled to receive the sacrament kneeling, nor to use the cross in baptism, nor to bow at the name of Jesus, nor to wear the surplice, except in the royal chapel and in cathedrals, nor should subscription to articles not doctrinal be required. He renewed also his declaration from Breda, that no man should be called in question for differences of religious opinion, not disturbing the peace of the kingdom.[1]

Though many of the presbyterian party deemed this modification of Anglican episcopacy a departure from their notions of an apostolic church, and inconsistent with their covenant, the majority would doubtless have acquiesced in so extensive a concession from the ruling power. If faithfully executed, according to its apparent meaning, it does not seem that the declaration falls very short of their own proposal, the scheme of Usher.[2] The high churchmen indeed would have murmured, had it been made effectual. But such as were nearest the king's councils well knew that nothing else was intended by it than to scatter dust in men's eyes, and prevent the interference of parliament. This was soon rendered manifest, when a bill to render the king's declaration effectual was vigorously opposed by the courtiers, and

[1] Parl. Hist. Neal, Baxter, Collier, &c. Burnet says that Clarendon had made the king publish the declaration; "but the bishops did not approve of this: and, after the service they did that lord in the duke of York's marriage, he would not put any hardship on those who had so signally obliged him." This is very invidious. I know no evidence that the declaration was published at Clarendon's suggestion, except indeed that he was the great adviser of the crown; yet in some things, especially of this nature, the king seems to have acted without his concurrence. He certainly speaks of the declaration as if he did not wholly relish it, (Life 75.) and does not state it fairly. In State Trials, vi. 11., it is said to have been drawn up by Morley and Henchman for the church, Reynolds and Calamy for the dissenters; if they disagreed, lords Anglesea and Hollis to decide.

[2] The chief objection made by the presbyterians, as far as we learn from Baxter, was, that the consent of presbyters to the bishops' acts was not promised by the declaration, but only their advice; a distinction apparently not very material in practice, but bearing perhaps on the great point of controversy, whether the difference between the two were in order or in degree. The king would not come into the scheme of consent: though they pressed him with a passage out of the Icon Basilikè, where his father allowed of it. Life of Baxter, 276. Some alterations however were made in consequence of their suggestions.

rejected on a second reading by 183 to 157.[1] Nothing could more forcibly demonstrate an intention of breaking faith with the presbyterians than this vote. For the king's declaration was repugnant to the act of uniformity and many other statutes, so that it could not be carried into effect without the authority of parliament, unless by means of such a general dispensing power as no parliament would endure.[2] And it is impossible to question that a bill for confirming it would have easily passed through this house of commons, had it not been for the resistance of the government.

Charles now dissolved the convention parliament, having obtained from it what was immediately necessary, but well aware that he could better accomplish his objects with another. It was studiously inculcated by the royalist lawyers, that as this assembly had not been summoned by the king's writ, none of its acts could have any real validity, except by the confirmation of a true parliament.[3] This doctrine being applicable to the act of indemnity left the kingdom in a precarious condition, till an undeniable security could be obtained, and rendered the dissolution almost necessary. Another parliament was called of very different composition from the last. Possession and the standing ordinances against royalists had enabled the secluded members of 1648, that is, the adherents of the long parliament, to stem with some degree of success the impetuous tide of loyalty in the last elections, and put them almost upon an equality with the court. But in the new assembly, cavaliers, and the sons of cavaliers, entirely predominated; the great families, the ancient gentry, the episcopal clergy, resumed their influence; the presbyterians and sectarians feared to have their offences remembered; so that we may rather be surprised that about fifty or sixty who had belonged to the opposite side found places in such a parliament, than that its general complexion should be decidedly royalist. The presbyterian faction seemed to lie prostrate at the feet of those on whom they had so long triumphed, without any force of arms, or civil convulsion, as if the king had been brought in against their will. Nor did the cavaliers fail to treat them as enemies to

[1] Parl. Hist. 141. 152. Clarendon, 76., most strangely observes on this: "Some of the leaders brought a bill into the house for the making that declaration a law, which was suitable to their other acts of ingenuity to keep the church for ever under the same indulgence and without any settlement; which being quickly perceived, there was no further progress in it." The bill was brought in by sir Matthew Hale.

[2] Collier, who of course thinks this declaration an encroachment on the church, as well as on the legislative power, says, "For this reason it was overlooked at the assizes and sessions in several places in the country, where the dissenting ministers were indicted for not conforming pursuant to the laws in force." P. 876. Neal confirms this, 586., and also Kennet's Register, 374.

[3] Life of Clarendon, 74. A plausible and somewhat dangerous attack had been made on the authority of this parliament from an opposite quarter, in a pamphlet written by one Drake, under the name of Thomas Philips, entitled "The Long Parliament Revived," and intended to prove that by the act of the late king, providing that they should not be dissolved but by the concurrence of the whole legislature, they were still in existence; and that the king's demise, which legally puts an end to a parliament, could not affect one that was declared permanent by so direct an enactment. This argument seems by no means inconsiderable: but the times were not such as to admit of technical reasoning. The convention parliament, after questioning Drake, finally sent up articles of impeachment against him; but the lords, after hearing him in his defence, when he confessed his fault, left him to be prosecuted by the attorney-general. Nothing more, probably, took place. Parl. Hist. 145. 157. This was in Nov. and Dec. 1660; but Drake's book seems still to have been in considerable circulation; at least I have two editions of it, both bearing the date of 1661. The argument it contains is purely legal; but the aim must have been to serve the presbyterian or parliamentarian cause.

monarchy, though it was notorious that the restoration was chiefly owing to their endeavours.[1]

The new parliament gave the first proofs of their disposition, by voting that all their members should receive the sacrament on a certain day according to the rites of the church of England, and that the solemn league and covenant should be burned by the common hangman.[2] They excited still more serious alarm by an evident reluctance to confirm the late act of indemnity, which the king at the opening of the session had pressed upon their attention. Those who had suffered the sequestrations and other losses of a vanquished party could not endure to abandon what they reckoned a just reparation. But Clarendon adhered with equal integrity and prudence to this fundamental principle of the restoration; and after a strong message from the king on the subject, the commons were content to let the bill pass with no new exceptions.[3] They gave indeed some relief to the ruined cavaliers, by voting 60,000*l.* to be distributed among that class; but so inadequate a compensation did not assuage their discontents.

It has been mentioned above, that the late house of commons had consented to the exception of Vane and Lambert from indemnity, on the king's promise that they should not suffer death. They had lain in the Tower accordingly, without being brought to trial. The regicides who had come in under the proclamation were saved from capital punishment by the former act of indemnity. But the present parliament abhorred this lukewarm lenity. A bill was brought in for the execution of the king's judges in the Tower; and the attorney-general was requested to proceed against Vane and Lambert.[4] The former

[1] Complaints of insults on the presbyterian clergy were made to the late parliament. Parl. Hist. 160. The Anglicans inveighed grossly against them on the score of their past conduct, notwithstanding the act of indemnity. Kennet's Register, 616. See, as a specimen, South's Sermons passim.

[2] Journs. 17 May, 1661. The previous question was moved on this vote, but lost by 228 to 103; Morice, the secretary of state, being one of the tellers for the minority. Monk, I believe, to whom Morice owed his elevation, did what he could to prevent violent measures against the presbyterians. Alderman Love was suspended from sitting in the house, July 3., for not having taken the sacrament. I suppose that he afterwards conformed; for he became an active member of the opposition.

[3] Journs. June 14. &c. Parl. Hist. 209. Life of Clarendon, 71. Burnet, 230. A bill discharging the loyalists from all interest exceeding three per cent. on debts contracted before the war, passed the commons but was dropped in the other house. The great discontent of this party at the indemnity continued to show itself in subsequent sessions. Clarendon mentions, with much censure, that many private bills passed about 1662, annulling conveyances of lands made during the troubles, pp. 162, 163. One remarkable instance ought to be noticed, as having been greatly misrepresented. At the earl of Derby's seat, of Knowsley in Lancashire, a tablet is placed to commemorate the ingratitude of Charles II. in having refused the royal assent to a bill which had passed both houses for restoring the son of the earl of Derby, who had lost his life in the royal cause, to his family estate. This has been so often reprinted by tourists and novelists, that it passes currently for a just reproach on the king's memory. It was however, in fact, one of his most honourable actions. The truth is, that the cavalier faction carried through parliament a bill to make void the conveyances of some manors which lord Derby had voluntarily sold before the restoration, in the very face of the act of indemnity, and against all law and justice. Clarendon, who, together with some very respectable peers, had protested against this measure in the upper house thought it his duty to recommend the king to refuse his assent. Lords' Journs. Feb. 6. and May 14. 1662. There is so much to blame in both the minister and his master, that it is but fair to give them credit for that which the pardonable prejudices of the family interested have led it to misstate.

[4] Coms'. Journs. 1st July, 1661. A division took place, Nov. 26., on a motion to lay this bill aside, in consideration of the king's proclamation; which was lost by 124 to 109: lord Cornbury (Clarendon's son) being a teller for the Noes. The bill was sent up to the lords Jan. 27. 1662. Parl. Hist. 217. 225. Some of their proceedings trespassed upon the executive power, and infringed the prerogative [illegible] laboured to exalt. But long interruption of the due course

was dropped in the house of lords; but those formidable chiefs of the commonwealth were brought to trial. Their indictments alleged as overt acts of high treason against Charles II. their exercise of civil and military functions under the usurping government; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person. Under such an accusation many who had been the most earnest in the king's restoration might have stood at the bar. Thousands might apply to themselves, in the case of Vane, the beautiful expression of Mrs. Hutchinson, as to her husband's feelings at the death of the regicides, that he looked on himself as judged in their judgment, and executed in their execution. The stroke fell upon one, the reproach upon many.

The condemnation of sir Henry Vane was very questionable, even according to the letter of the law. It was plainly repugnant to its spirit. An excellent statute enacted under Henry VII., and deemed by some great writers to be only declaratory of the common law, but occasioned, no doubt, by some harsh judgments of treason which had been pronounced during the late competition of the houses of York and Lancaster, assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered when another claimant should gain possession of the throne. It established the duty of allegiance to the existing government upon a general principle; but in its terms it certainly presumed that government to be a monarchy. This furnished the judges upon the trial of Vane with a distinction of which they willingly availed themselves. They proceeded however, beyond all bounds of constitutional precedents and of common sense, when they determined that Charles the Second had been king de facto as well as de jure from the moment of his father's death, though, in the words of their senseless sophistry, "kept out of the exercise of his royal authority by traitors and rebels." He had indeed assumed the title during his exile, and had granted letters patent for different purposes, which it was thought proper to hold good after his restoration; thus presenting the strange anomaly, and as it were contradiction in terms, of a king who began to govern in the twelfth year of his reign. But this had not been the usage of former times. Edward IV., Richard III., Henry VII., had dated their instruments either from their proclamation, or at least from some act of possession. The question was not whether a right to the crown descended according to the laws of inheritance; but whether such a right, divested of possession, could challenge allegiance as a bounden duty by the law of England. This is expressly determined in the negative by lord Coke in his third Institute, who maintains a king "that hath right, and is out of possession," not to be within the statute of treasons. He asserts also that a pardon granted by him would be void; which by parity of reasoning must extend to all his patents.[1] We may consider therefore the execution of Vane as one of the most reprehensible

of the constitution had made its boundaries indistinct. Thus in the convention parliament, the bodies of Cromwell, Bradshaw, Ireton, and others, were ordered, Dec. 4., on the motion of colonel Titus, to be disinterred, and hanged on a gibbet. The lords concurred in this order; but the mode of address to the king would have been more regular. Parl. Hist. 151.

[1] 3 Inst. 7. This appears to have been held in Bagot's case, 9 Edw. 4. See also Higden's View of the English Constitution, 1709.

actions of this bad reign. It not only violated the assurance of indemnity, but introduced a principle of sanguinary proscription, which would render the return of what is called legitimate government under any circumstances, an intolerable curse to a nation.[1]

The king violated his promise by the execution of Vane, as much as the judges strained the law by his conviction. He had assured the last parliament, in answer to their address, that if Vane and Lambert should be attainted by law he would not suffer the sentence to be executed. Though the present parliament had urged the attorney-general to bring these delinquents to trial, they had never, by an address to the king, given him a colour for retracting his promise of mercy. It is worthy of notice that Clarendon does not say a syllable about Vane's trial; which affords a strong presumption that he thought it a breach of the act of indemnity. But we have on record a remarkable letter of the king to his minister, wherein he expresses his resentment at Vane's bold demeanour during his trial, and intimates a wish for his death, though with some doubts whether it could be honourably done.[2] Doubts of such a nature never lasted long with this prince; and Vane suffered the week after. Lambert, whose submissive behaviour had furnished a contrast with that of Vane, was sent to Guernsey; and remained a prisoner for thirty years. The royalists have spoken of Vane with extreme dislike; yet it should be remembered that he was not only incorrupt, but disinterested, inflexible in conforming his public conduct to his principles, and averse to every sanguinary or oppressive measure: qualities not very common in revolutionary chiefs, and which honourably distinguished him from the Lamberts and Haslerigs of his party.[3]

No time was lost, as might be expected from the temper of the commons, in replacing the throne on its constitutional basis after the rude encroachments of the long parliament. They declared that there was no legislative power in either or both houses without the king; that the league and covenant was unlawfully imposed; that the sole supreme command of the militia, and of all forces by sea and land, had ever been by the laws of England the undoubted right of the crown; that neither house of parliament could pretend to it, nor could lawfully levy any war offensive or defensive against his majesty.[4] These last words appeared to go a dangerous length, and to sanction the suicidal doctrine of absolute non-resistance. They made the law of high treason more strict during the king's life, in pursuance of a precedent

[1] Foster, in his Discourse on High Treason, evidently intimates that he thought the conviction of Vane unjustifiable.

[2] "The relation that has been made to me of sir H. Vane's carriage yesterday in the Hall is the occasion of this letter, which, if I am rightly informed, was so insolent, as to justify all he had done; acknowledging no supreme power in England but a parliament, and many things to that purpose. You have had a true account of all; and if he has given new occasion to be hanged, certainly he is too dangerous a man to let live, if we can honestly put him out of the way. Think of this, and give me some account of it to-morrow; till when I have no more to say to you. C." Indorsed in lord Clarendon's hand, "The king, June 7. 1662." Vane was beheaded June 14. Burnet (note in Oxford ed.), p. 164. Harris's Lives, v. 32.

[3] Vane gave up the profits of his place as treasurer of the navy, which according to his patent, would have amounted to 30,000*l.* per annum, if we may rely on Harris's life of Cromwell, p. 260.

[4] 13 Car. II. c. 1. & 6. A bill for settling the militia had been much opposed in the convention parliament, as tending to bring in martial law. Parl. History iv. 145. It seems to have dropped.

in the reign of Elizabeth. (C. 1.) They restored the bishops to their seats in the house of lords; a step which the last parliament would never have been induced to take, but which met with little opposition from the present.[1] The violence that had attended their exclusion seemed a sufficient motive for rescinding a statute so improperly obtained, even if the policy of maintaining the spiritual peers were somewhat doubtful. The remembrance of those tumultuous assemblages which had overawed their predecessors in the winter of 1641, and at other times, produced a law against disorderly petitions. This statute provides that no petition or address shall be presented to the king or either house of parliament by more than ten persons; nor shall any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury. (C. 5.)

Thus far the new parliament might be said to have acted chiefly on a principle of repairing the breaches recently made in our constitution, and of re-establishing the just boundaries of the executive power; nor would much objection have been offered to their measures, had they gone no farther in the same course. The act for regulating corporations is much more questionable, and displayed a determination to exclude a considerable portion of the community from their civil rights. It enjoined all magistrates and persons bearing offices of trust in corporations to swear, that they believed it unlawful, on any pretence whatever, to take arms against the king, and that they abhorred the traitorous position of bearing arms by his authority against his person, or against those that are commissioned by him. They were also to renounce all obligation arising out of the oath called the solemn league and covenant; in case of refusal, to be immediately removed from office. Those elected in future were, in addition to the same oaths, to have received the sacrament within one year before their election, according to the rites of the English church.[2] These provisions struck at the heart of the presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to parliament a very large proportion of its members. Yet it rarely happens that a political faction is crushed by the terrors of an oath. Many of the more rigid presbyterians refused the conditions imposed by this act; but the majority found pretexts for qualifying themselves.

It could not yet be said, that this loyal assembly had meddled with those safeguards of public liberty which had been erected by their great predecessors in 1641. The laws that Falkland and Hampden had combined to provide, those bulwarks against the ancient exorbitance of prerogative, stood unscathed; threatened from afar, but not

[1] C. 2. The only opposition made to this was in the house of lords by the earl of Bristol and some of the Roman catholic party, who thought the bishops would not be brought into a toleration of their religion. Life of Clarendon, p. 138.

[2] 13 Car. II. sess. 2. c. 1. This bill did not pass without a strong opposition in the commons. It was carried at last by 182 to 77, Journs. July 5.; but on a previous division for its commitment the numbers were 185 to 136. June 20. Prynne was afterwards reprimanded by the speaker for publishing a pamphlet against this act, July 15.; but his courage had now forsaken him; and he made a submissive apology, though the censure was pronounced in a very harsh manner

yet betrayed by the garrison. But one of these, the bill for triennial parliaments, wounded the pride of royalty, and gave scandal to its worshippers; not so much on account of its object, as of the securities provided against its violation. If the king did not summon a fresh parliament within three years after a dissolution, the peers were to meet and issue writs of their own accord; if they did not within a certain time perform this duty, the sheriffs of every county were to take it on themselves; and, in default of all constituted authorities, the electors might assemble without any regular summons, to choose representatives. It was manifest that the king must have taken a fixed resolution to trample on a fundamental law, before these irregular tumultuous modes of redress could be called into action; and that the existence of such provisions could not in any degree weaken or endanger the legal and limited monarchy. But the doctrine of passive obedience had now crept from the homilies into the statute-book; the parliament had not scrupled to declare the unlawfulness of defensive war against the king's person; and it was but one step more to take away all direct means of counteracting his pleasure. Bills were accordingly more than once ordered to be brought in for repealing the triennial act; but no further steps were taken till the king thought it at length necessary in the year 1664 to give them an intimation of his desires. (Journs. 3d April, 1662; 10th Mar. 1663.) A vague notion had partially gained ground that no parliament, by virtue of that bill, could sit for more than three years. In allusion to this, he told them, on opening the session of 1664, that he "had often read over that bill; and, though there was no colour for the fancy of the determination of the parliament, yet he would not deny that he had always expected them to consider the wonderful clauses in that bill, which passed in a time very uncareful for the dignity of the crown or the security of the people. He requested them to look again at it. For himself, he loved parliaments; he was much beholden to them; he did not think the crown could ever be happy without frequent parliaments. But assure yourselves," he concluded, "if I should think otherwise, I would never suffer a parliament to come together by the means prescribed by that bill."[1]

So audacious a declaration, equivalent to an avowed design, in certain circumstances, of preventing the execution of the laws by force of arms, was never before heard from the lips of an English king; and would in any other times have awakened a storm of indignation from the commons. They were however sufficiently compliant to pass a bill for the repeal of that which had been enacted with unanimous consent in 1641, and had been hailed as the great palladium of constitutional monarchy. The preamble recites the said act to have been "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of parliaments." The bill then repeals and annuls every clause and article in the fullest manner; yet, with an inconsistency not unusual in our statutes, adds a provision that parliaments shall not in future be intermitted for above three years at the most. This clause is evidently framed in a different spirit from the original bill, and may be attri-

[1] Parl. Hist. 289. Clarendon speaks very unjustly of the triennial act, forgetting that he had himself concurred in it. P. 221

buted to the influence of that party in the house, which had begun to oppose the court, and already showed itself in considerable strength.[1] Thus the effect of this compromise was, that the law of the long parliament subsisted as to its principle, without those unusual clauses which had been enacted to render its observance secure. The king assured them, in giving his assent to the repeal, that he would not be a day more without a parliament on that account. But the necessity of those securities, and the mischiefs of that false and servile loyalty which abrogated them, became manifest at the close of the present reign; nearly four years having elapsed between the dissolution of Charles's last parliament and his death.

Clarendon, the principal adviser, as yet, of the king since his restoration (for Southampton rather gave reputation to the administration than took that superior influence which belonged to his place of treasurer), has thought fit to stigmatize the triennial bill with the epithet of infamous. So wholly had he divested himself of the sentiments he entertained at the beginning of the long parliament, that he sought nothing more ardently than to place the crown again in a condition to commit those abuses and excesses, against which he had once so much inveighed. "He did never dissemble," he says, "from the time of his return with the king, that the late rebellion could never be extirpated and pulled up by the roots till the king's regal and inherent power and prerogative should be fully avowed and vindicated, and till the usurpations in both houses of parliament, since the year 1640, were disclaimed and made odious; and many other excesses, which had been effected by both before that time under the name of privileges, should be restrained or explained. For all which reformation the kingdom in general was very well disposed, when it pleased God to restore the king to it. The present parliament had done much, and would willingly have prosecuted the same method, if they had had the same advice and encouragement." (P. 383.) I can only understand these words to mean that they might have been led to repeal other statutes of the long parliament besides the triennial act, and that excluding the bishops from the house of peers; but more especially to have restored the two great levers of prerogative, the courts of star-chamber and high-commission. This would indeed have pulled up by the roots the work of the long parliament, which, in spite of such general reproach, still continued to shackle the revived monarchy. There had been some serious attempts at this in the house of lords during the session of 1661–2. We read in the Journals (Lord's Journs. 23d and 24th Jan. 1662) that a committee was appointed to prepare a bill for repealing all acts made in the parliament begun the 3d day of November, 1640, and for re-enacting such of them as should be thought fit. This committee some time after (12th Feb.) reported their opinion, "that it was fit for the good of the nation, that there be a court of like nature to the late court called the star-chamber; but desired the advice and directions of the house in these particulars following: Who should be judges? What matters

[1] 16 Car. II. c. 1. We find by the Journals that some divisions took place during the passage of this bill, and though, as far as appears, on subordinate points, yet probably springing from an opposition to its principle. Mar. 28. 1664. There was by this time a regular party formed against the court.

should they be judges of? By what manner of proceedings should they act?" The house, it is added, thought it not fit to give any particular directions therein, but left it to the committee to proceed as they would. It does not appear that any thing farther was done in this session; but we find the bill of repeal revived next year. (19th Mar. 1663.) It is however only once mentioned. Perhaps it may be questionable, whether, even amidst the fervid loyalty of 1661, the house of commons would have concurred in re-establishing the star-chamber. They had taken marked precautions in passing an act for the restoration of ecclesiastical jurisdiction, that it should not be construed to restore the high-commission court, or to give validity to the canons of 1640, or to enlarge in any manner the ancient authority of the church. (13 Car. II. c. 12.) A tribunal still more formidable and obnoxious would hardly have found favour with a body of men, who, as their behaviour shortly demonstrated, might rather be taxed with passion and vindictiveness towards a hostile faction, than a deliberate willingness to abandon their English rights and privileges.

The striking characteristic of this parliament was a zealous and intolerant attachment to the established church, not losing an atom of their aversion to popery in their abhorrence of protestant dissent. In every former parliament since the reformation, the country party (if I may use such a word, by anticipation, for those gentlemen of landed estates who owed their seats to their provincial importance, as distinguished from courtiers, lawyers, and dependents on the nobility,) had incurred with rigid churchmen the reproach of puritanical affections. They were implacable against popery, but disposed to far more indulgence with respect to nonconformity, than the very different maxims of Elizabeth and her successors would permit. Yet it is obvious that the puritan commons of James I. and the high-church commons of Charles II. were composed, in a great measure, of the same families, and entirely of the same classes. But, as the arrogance of the prelates had excited indignation, and the sufferings of the scrupulous clergy begotten sympathy in one age, so the reversed scenes of the last twenty years had given to the former, or their adherents, the advantage of enduring oppression with humility and fortitude, and displayed in the latter, or at least many of their number, those odious and malevolent qualities which adversity had either concealed or rendered less dangerous. The gentry, connected for the most part by birth or education with the episcopal clergy, could not for an instant hesitate between the ancient establishment, and one composed of men whose eloquence in preaching was chiefly directed towards the common people, and pre-supposed a degree of enthusiasm in the hearer which the higher classes rarely possessed. They dreaded the wilder sectaries, foes to property, or at least to its political influence, as much as to the regal constitution; and not unnaturally, though without perfect fairness, confounded the presbyterian or moderate nonconformist in the motley crowd of fanatics, to many of whose tenets he at least more approximated than the church of England minister.

There is every reason to presume, as I have already remarked, that the king had no intention but to deceive the presbyterians and their friends in the convention parliament by his declaration of October,

1660.[1] He proceeded, after the dissolution of that assembly, to fill up the number of bishops, who had been reduced to nine, but with no further mention of suffragans, or of the council of presbyters, which had been announced in that declaration.[2] It does indeed appear highly probable that this scheme of Usher would have been found inconvenient and even impracticable; and reflecting men would perhaps be apt to say that the usage of primitive antiquity, upon which all parties laid so much stress, was rather a presumptive argument against the adoption of any system of church-government, in circumstances so widely different, than in favour of it. But inconvenient and impracticable provisions carry with them their own remedy; and the king might have respected his own word, and the wishes of a large part of the church, without any formidable danger to episcopal authority. It would have been, however, too flagrant a breach of promise (and yet hardly greater than that just mentioned) if some show had not been made of desiring a reconciliation on the subordinate details of religious ceremonies and the liturgy. This produced a conference held at the Savoy, in May, 1661, between twenty-one Anglican and as many presbyterian divines: the latter were called upon to propose their objections; it being the part of the others to defend. They brought forward so long a list as seemed to raise little hope of agreement. Some of these objections to the service, as may be imagined, were rather captious and hypercritical; yet in many cases they pointed out real defects. As to ceremonies, they dwelt on the same scruples as had from the beginning of Elizabeth's reign produced so unhappy a discordance, and had become inveterate by so much persecution. The conference was managed with great mutual bitterness and recrimination; the one party stimulated by vindictive hatred and the natural arrogance of power; the other irritated by the manifest design of breaking the king's faith, and probably by a sense of their own improvidence in ruining them-

[1] Clarendon, in his Life, p. 149., says, that the king "had received the presbyterian ministers with grace; and did believe that he should work upon them by persuasions, having been well acquainted with their common arguments by the conversation he had had in Scotland, and *was very able to confute them.*" This is one of the strange absurdities into which Clarendon's prejudices hurry him in almost every page of his writings, and more especially in this continuation of his Life. Charles, as his minister well knew, could not read a common Latin book, (Clar. St. Papers, iii. 567.) and had no manner of acquaintance with theological learning, unless the popular argument in favour of popery is so to be called; yet he was very able to confute men who had passed their lives in study, on a subject involving a considerable knowledge of Scripture and the early writers in their original languages.

[2] Clarendon admits that this could not have been done till the former parliament was dissolved, 97. This means, of course, the supposition that the king's word was to be broken. "The malignity towards the church," he says, "seemed increasing, and to be greater than at the coming in of the king." Pepys, in his Diary, has several sharp remarks on the misconduct and unpopularity of the bishops, though himself an episcopalian even before the restoration. "The clergy are so high that all people I meet with do protest against their practice." Aug. 31. 1660. "I am convinced in my judgment that the present clergy will never heartily go down with the generality of the commons of England; they have been so used to liberty and freedom, and they are so acquainted with the pride and debauchery of the present clergy. He (Mr. Blackburn, a non-conformist) did give me many stories of the affronts which the clergy receive in all parts of England from the gentry and ordinary persons of the parish." Nov. 9. 1663. The opposite party had recourse to the old weapons of pious fraud. I have a tract containing twenty-seven instances of remarkable judgments, all between June, 1660, and April, 1661, which befell divers persons for reading the common prayer, or, the more common offence, reviling godly ministers. This is entitled Annus Mirabilis; and, besides the above twenty-seven, attests so many prodigies, that the name is by no means misapplied. The bishops made large fortunes by filling up leases. Burnet, 260. And Clarendon admits them to have been too rapacious, though he tries to extenuate. P. 48.

selves by his restoration. The chief blame, it cannot be dissembled, ought to fall on the churchmen. An opportunity was afforded of healing, in a very great measure, that schism and separation which, if they are to be believed, is one of the worst evils that can befall a Christian community. They had it in their power to retain or to expel a vast number of worthy and laborious ministers of the gospel, with whom they had, in their own estimation, no essential ground of difference. They knew the king, and consequently themselves, to have been restored with (I might almost say by) the strenuous co-operation of those very men who were now at their mercy. To judge by the rules of moral wisdom, or of the spirit of Christianity, (to which, notwithstanding what might be satirically said of experience, it is difficult not to think we have a right to expect that a body of ecclesiastics should pay some attention,) there can be no justification for the Anglican party on this occasion. They have certainly one apology, the best very frequently that can be offered for human infirmity; they had sustained a long and unjust exclusion from the emoluments of their profession, which begot a natural dislike towards the members of the sect that had profited at their expense, though not, in general, personally responsible for their misfortunes.[1]

The Savoy conference broke up in anger, each party more exasperated and more irreconcilable than before. This, indeed, has been the usual consequence of attempts to bring men to an understanding on religious differences by explanation or compromise. The public is apt to expect too much from these discussions; unwilling to believe either that those who have a reputation for piety can be wanting in desire to find the truth, or that those who are esteemed for ability can miss it. And this expectation is heightened by the language rather too strongly held by moderate and peaceable divines, that little more is required than an understanding of each others' meaning, to unite conflicting sects in a common faith. But as it generally happens that the disputes of theologians, though far from being so important as they appear to the narrow prejudices and the heated passions of the combatants, are not wholly nominal, or capable of being reduced to a common form of words, the hopes of union and settlement vanish upon that closer inquiry which conferences and schemes of agreement produce. And though this may seem rather applicable to speculative

[1] The fullest account of this conference, and of all that passed as to the comprehension of the presbyterians, is to be read in Baxter, whom Neal has abridged. Some allowance must, of course, be made for the resentment of Baxter; but his known integrity makes it impossible to discredit the main part of his narration. Nor is it necessary to rest on the evidence of those who may be supposed to have the prejudices of dissenters. For bishop Burnet admits that all the concern which seemed to employ the prelates' minds, was not only to make no alteration on the presbyterians' account, but to straiten the terms of conformity far more than before the war. Those, however, who would see what can be said by writers of high-church principles, may consult Kennet's History of Charles II. p. 252., or Collier, p. 878. One little anecdote may serve to display the spirit with which the Anglicans came to the conference. Upon Baxter's saying that their proceedings would alienate a great part of the *nation*, Stearne, bishop of Carlisle, observed to his associates: "He will not say *kingdom*, lest he should acknowledge a king." Baxter, p. 338. This was a very malignant reflection on a man who was well known never to have been of the republican party. It is true that Baxter seems to have thought, in 1659, that Richard Cromwell would have served the turn better than Charles Stuart; and, as a presbyterian, he thought very rightly. See p. 207. and part iii. p. 71. But, preaching before the parliament, April 30. 1660, he said it was none of our differences whether we should be loyal to our king; on that all were agreed. P. 217.

controversies than to such matters as were debated between the church and the presbyterians at the Savoy conference, and which are in their nature more capable of compromise than articles of doctrine; yet the consequence of exhibiting the incompatibility and reciprocal alienation of the two parties in a clearer light was nearly the same.

A determination having been taken to admit of no extensive comprehension, it was debated by the government whether to make a few alterations in the liturgy, or to restore the ancient service in every particular. The former advice prevailed, though with no desire or expectation of conciliating any scrupulous persons by the amendments introduced.[1] These were by no means numerous, and in some instances rather chosen in order to irritate and mock the opposite party, than from any compliance with their prejudices. It is indeed very probable, from the temper of the new parliament, that they would not have come into more tolerant and healing measures. When the act of uniformity was brought into the house of lords, it was found not only to restore all the ceremonies and other matters to which objection had been taken, but to contain fresh clauses more intolerable than the rest to the presbyterian clergy. One of these enacted that not only every beneficed minister, but fellow of a college, or even schoolmaster, should declare his unfeigned assent and consent to all and every thing contained in the book of common prayer. (13 & 14 Car. II. c. iv. § 3.) These words, however capable of being eluded and explained away, as such subscriptions always are, seemed to amount, in common use of language, to a complete approbation of an entire volume, such as a man of sense hardly gives to any book, and which, at a time when scrupulous persons were with great difficulty endeavouring to reconcile themselves to submission, placed a new stumbling-block in their way, which, without abandoning their integrity, they found it impossible to surmount.

The malignity of those who chiefly managed church affairs at this period displayed itself in another innovation tending to the same end. It had been not unusual from the very beginnings of our reformation, to admit ministers ordained in foreign protestant churches to benefices in England. No re-ordination had ever been practised with respect to those who had received the imposition of hands in a regular church; and hence it appears that the church of England, whatever tenets might latterly have been broached in controversy, did not consider the ordination of presbyters invalid. Though such ordinations as had taken place during the late troubles, and by virtue of which a great part of the actual clergy were in possession, were evidently irregular on the supposition that the English episcopal church was then in existence; yet if the argument from such great convenience as men

[1] Life of Clarendon, 147. He observes that the alterations made did not reduce one of the opposite party to the obedience of the church. Now, in the first place, he could not know this; and, in the next, he conceals from the reader, that, on the whole matter, the changes made in the liturgy were more likely to disgust than to conciliate. Thus the puritans having always objected to the number of saints' days, the bishops added a few more; and the former having given very plausible reasons against the apocryphal lessons in the daily service, the others inserted the legend of Bel and the Dragon, for no other purpose than to show contempt of their scruples. The alterations may be seen in Kennet's Register, 585. The most important was the restoration of a rubric inserted in the communion service under Edward VI., but left out by Elizabeth, declaring against any corporal presence in the Lord's supper. This gave offence to some of those who had adopted that opinion, especially the duke of York, and perhaps tended to complete his alienation from the Anglican church. Burnet, i. 183.

call necessity was to prevail, it was surely worth while to suffer them to pass without question for the present, enacting provisions, if such were required, for the future. But this did not fall in with the passion and policy of the bishops, who found a pretext for their worldly motives of action in the supposed divine right and necessity of episcopal succession; a theory naturally more agreeable to arrogant and dogmatical ecclesiastics than that of Cranmer, who saw no intrinsic difference between bishops and priests; or of Hooker, who thought ecclesiastical superiorities, like civil, subject to variation: or of Stillingfleet, who had lately pointed out the impossibility of ascertaining beyond doubtful conjecture the real constitution of the apostolical church, from the scanty, inconclusive testimonies that either Scripture or antiquity furnish. It was therefore enacted in the statute for uniformity, that no person should hold any preferment in England, without having received episcopal ordination. There seems to be little or no objection to this provision, if ordination be considered as a ceremony of admission into a particular society; but according to the theories which both parties had embraced in that age, it conferred a sort of mysterious indelible character, which rendered its repetition improper.[1]

The new act of uniformity succeeded to the utmost wishes of its promoters. It provided that every minister should, before the feast of St. Bartholomew, 1662, publicly declare his assent and consent to every thing contained in the book of common prayer, on pain of being ipso facto deprived of his benefice.[2] Though even the long parliament had reserved a fifth of the profits to those who were ejected for refusing the covenant, no mercy could be obtained from the still greater bigotry of the present; and a motion to make that allowance to nonconforming ministers was lost by 94 to 87.[3] The lords had shown a more temperate spirit, and made several alterations of a conciliating nature. They objected to extending the subscription required by the act to schoolmasters. But the commons urged in a conference the force of education, which made it necessary to take care for the youth. The upper house even inserted a proviso, allowing the king to dispense with the surplice and the sign of the cross; but the commons resolutely

[1] Life of Clar. 152. Burnet, 256. Morley, afterwards bishop of Winchester, was engaged just before the restoration in negotiating with the presbyterians. They stuck out for the negative voice of the council of presbyters, and for the validity of their ordinations. Clar. State Papers, 727. He had two schemes to get over the difficulty; one to pass them over sub silentio; the other, a hypothetical re-ordination, on the supposition that something might have been wanting before, as the church of Rome practises about re-baptization. The former is a curious expedient for those who pretend to think presbyterian ordinations really null. Id. 738.

[2] The day fixed upon suggested a comparison which, though severe, was obvious. A modern writer has observed on this, "They were careful not to remember that the same day, and for the same reason, because the tithes were commonly due at Michaelmas, had been appointed for the former ejectment, when four times as many of the loyal clergy were deprived for fidelity to their sovereign." Southey's Hist. of the Church, ii. 467. That the day was chosen in order to deprive the incumbent of a whole year's tithes, Mr. Southey has learned from Burnet; and it aggravates the cruelty of the proceeding—but where has he found his precedent? The Anglican clergy were ejected for refusing the covenant at no one definite period, as, on recollection, Mr. S. would be aware; nor can I find any one parliamentary ordinance in Husband's Collection that mentions St. Bartholomew's day. There was a precedent indeed in that case, which the government of Charles did not chose to follow. One fifth of the income had been reserved for the dispossessed incumbents.

[3] Journs., April 26. This may perhaps have given rise to a mistake we find in Neal, 624., that the act of uniformity only passed by 186 to 180. There was no division at all upon the bill except that I have mentioned.

withstanding this and every other alteration, they were all given up. Yet next year, when it was found necessary to pass an act for the relief of those who had been prevented involuntarily from subscribing the declaration in due time, a clause was introduced, declaring that the assent and consent to the book of common prayer required by the said act should be understood only as to practice and obedience, and not otherwise. The duke of York and twelve lay peers protested against this clause, as destructive to the church of England as now established; and the commons vehemently objecting to it, the partisans of moderate councils gave way as before. (Lords' Journs., 25th and 27th July, 1663. Ralph, 58.) When the day of St. Bartholomew came, about 2000 persons resigned their preferments rather than stain their consciences by compliance—an act to which the more liberal Anglicans, after the bitterness of immediate passions had passed away, have accorded that praise which is due to heroic virtue in an enemy. It may justly be said that the episcopal clergy had set an example of similar magnanimity in refusing to take the covenant. Yet, as that was partly of a political nature, and those who were ejected for not taking it might hope to be restored through the success of the king's arms, I do not know that it was altogether so eminent an act of self-devotion as the presbyterian clergy displayed on St. Bartholomew's day. Both of them afford striking contrasts to the pliancy of the English church in the greater question of the preceding century, and bear witness to a remarkable integrity and consistency of principle.[2]

No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his declarations, both that from Breda, and that which he published in October, 1660. It is idle to say, that those declarations were subject to the decision of parliament, as if the crown had no sort of influence in that assembly, nor even any means of making its inclinations known. He had urged them to confirm the act of indemnity, wherein he thought his honour and security concerned: was it less easy to obtain, or at least to ask for their concurrence in a comprehension or toleration of the presbyterian clergy? Yet, after mocking those persons with pretended favour, and even offering bishoprics to some of their number, by way of purchasing their defection, the king made no effort to mitigate the provisions of the act of uniformity; and Clarendon strenuously supported them through both houses of parliament.[3] This behaviour in the minister sprung from real bigotry and dislike of the presbyterians; but Charles

[1] The report of the conference, Lords' Journals, 7th May, is altogether rather curious.

[2] Neal, 625-636. Baxter told Burnet, as the latter says, p. 185., that not above 300 would have resigned had the terms of the king's declaration been adhered to. The blame, he goes on, fell chiefly on Sheldon. But Clarendon was charged with entertaining the presbyterians with good words, while he was giving way to the bishops. See also p. 268. Baxter puts the number of the deprived at 1800. Life, 384. And it has generally been reckoned, about 2000; though Burnet says it has been much controverted. If indeed we can rely on Calamy's account of the ejected ministers, abridged by Palmer under the title of The Nonconformist's Memorial, the number must have been full 2400. Kennet, however (Register, 807.), notices great mistakes of Calamy in respect only to one diocese, that of Peterborough. Probably both in this collection, and in that of Walker on the other side, as in all martyrologies, there are abundant errors; but enough will remain to afford memorable examples of conscientious suffering; and we cannot read without indignation Kennet's endeavours, in the conclusion of his volume, to extenuate the praise of the deprived presbyterians by captious and unfair arguments.

[3] See Clarendon's feeble attempt to vindicate the king from the charge of breach of faith, 157.

was influenced by a very different motive, which had become the secret spring of all his policy. This requires to be fully explained.

Charles, during his misfortunes, had made repeated promises to the pope and the great catholic princes of relaxing the penal laws against his subjects of that religion—promises which he well knew to be the necessary condition of their assistance. And, though he never received any succour which could demand the performance of these assurances, his desire to stand well with France and Spain, as well as a sense of what was really due to the English catholics, would have disposed him to grant every indulgence which the temper of his people should permit. The laws were highly severe, in some cases sanguinary; they were enacted in very different times, from plausible motives of distrust, which it would be now both absurd and ungrateful to retain. The catholics had been the most strenuous of the late king's adherents, the greatest sufferers for their loyalty. Out of about 500 gentlemen who lost their lives in the royal cause, one third, it has been said, were of that religion.[1] Their estates had been selected for confiscation, when others had been admitted to compound. It is, however, certain that after the conclusion of the war, and especially during the usurpation of Cromwell, they declined in general to provoke a government which showed a good deal of connivance towards their religion by keeping up any connexion with the exiled family.[2] They had, as was surely very natural, one paramount object in their political conduct, the enjoyment of religious liberty; whatever debt of gratitude they might have owed to Charles I. had been amply paid; and perhaps they might reflect, that he had never scrupled, in his various negotiations with the parliament, to acquiesce in any proscriptive measures suggested against popery. This apparent abandonment, however, of the royal interests excited the displeasure of Clarendon, which was increased by a tendency some of the catholics showed to unite with Lambert, who was understood to be privately of their religion, and by an intrigue carried on in 1659, by the machinations of Buckingham with some priests, to set up the duke of York for the crown. But the king retained no resentment of the general conduct of this party; and was desirous to give them a testimony of his confidence, by mitigating the penal laws against their religion. Some steps were taken towards this by the house of lords in the session of 1661; and there seems little doubt that the statutes at least inflicting capital punishment would have been repealed without difficulty, if the catholics had not lost the favourable moment by some disunion among themselves, which the never-ceasing intrigues of the Jesuits contrived to produce.[3]

There can be no sort of doubt that the king's natural facility, and exemption from all prejudice in favour of established laws, would have

[1] A list of these, published in 1660, contains more than 170 names. Neal, 590.

[2] Sir Kenelm Digby was supposed to be deep in a scheme that the catholics, in 1649, should support the commonwealth with all their power, in return for liberty of religion. Carte's Letters, i. 216. et post. We find a letter from him to Cromwell in 1656, (Thurloe, iv. 591.) with great protestations of duty.

[3] Lords' Journs., June and July, 1661, or extracts from them in Kennet's Register, 469, &c. 620, &c. and 798., where are several other particulars worthy of notice. Clarendon, 143., explains the failure of this attempt at a partial toleration (for it was only meant as to the exercise of religious rites in private houses) by the persevering opposition of the jesuits to the oath of allegiance, to which the lay catholics, and generally the secular priests, had long ceased to

led him to afford every indulgence that could be demanded to his catholic subjects, many of whom were his companions or his counsellors, without any propensity towards their religion. But it is morally certain that, during the period of his banishment, he had imbibed, as deeply and seriously as the character of his mind would permit, a persuasion that, if any scheme of christianity were true, it could only be found in the bosom of an infallible church; though he was never reconciled, according to the formal profession which she exacts, till the last hours of his life. The secret however of his inclinations, though disguised to the world by the appearance, and probably sometimes more than the appearance, of carelessness and infidelity, could not be wholly concealed from his court. It appears the most natural mode of accounting for the sudden conversion of the earl of Bristol to popery, which is generally agreed to have been insincere. An ambitious intriguer, holding the post of secretary of state, would not have ventured such a step without some grounds of confidence in his master's wishes; though his characteristic precipitancy hurried him forward to destroy his own hopes. Nor are there wanting proofs that the protestantism of both the brothers was greatly suspected in England before the restoration.[1] These suspicions acquired strength after the king's return, through his manifest intention not to marry a protestant; and still more through the presumptuous demeanour of the opposite party, which seemed to indicate some surer grounds of confidence than were yet manifest. The new parliament in its first session had made it penal to say that the king was a papist or popishly affected; whence the prevalence of that scandal may be inferred. (13 Car. II. c. 1.)

Charles had no assistance to expect, in his scheme of granting a full toleration to the Roman faith, from his chief adviser Clarendon. A repeal of the sanguinary laws, a reasonable connivance, perhaps in some cases a dispensation—to these favours he would have acceded. But in his creed of policy, the legal allowance of any but the established religion was inconsistent with public order, and with the king's ecclesiastical prerogative. This was also a fixed principle with the parliament, whose implacable resentment towards the sectaries had not inclined them to abate in the least of their abhorrence and apprehension of popery. The church of England, distinctly and exclusively, was their rallying-point; the crown itself stood only second in their affections. The king therefore had recourse to a more subtle and indirect policy. If the terms of conformity had been so far relaxed as

make objection. The house had voted that the indulgence should not extend to jesuits, and that they would not alter the oaths of allegiance or supremacy. The jesuits complained of the distinction taken against them; and asserted, in a printed tract (Kennet ubi supra), that since 1616 they had been inhibited by their superiors from maintaining the pope's right to depose sovereigns. See also Butler's Mem. of Catholics, ii. 27.; iv. 142.; and Burnet, i. 194.

[1] The suspicions against Charles were very strong in England before the restoration, so as to alarm his emissaries. "Your master," Mordaunt writes to Ormond, Nov. 10. 1659, "is utterly ruined as to his interest here in whatever party, if this be true." Carte's Letters, ii. 264., and Clar. State Papers, iii. 602. But an anecdote related in Carte's Life of Ormond, ii. 255., and Harris's Lives, v. 54., which has obtained some credit, proves, if true, that he had embraced the Roman catholic religion as early as 1659, so as even to attend mass. This cannot be reckoned out of question; but the tendency of the king's mind before his return to England is to be inferred from all his behaviour. Kennet (Complete Hist. of England, iii. 237.) plainly insinuates that the project for restoring popery began at the treaty of the Pyrenees; and see his Register, p. 852.

to suffer the continuance of the presbyterian clergy in their benefices, there was every reason to expect from their known disposition a determined hostility to all approaches towards popery, and even to its toleration. It was therefore the policy of those who had the interests of that cause at heart, to permit no deviation from the act of uniformity, to resist all endeavours at a comprehension of dissenters within the pale of the church, and to make them look up to the king for indulgence in their separate way of worship. They were to be taught that amenable to the same laws as the Romanists, exposed to the oppression of the same enemies, they must act in concert for a common benefit. (Burnet, i. 179.) The presbyterian ministers, disheartened at the violence of the parliament, had recourse to Charles, whose affability and fair promises they were loth to distrust; and implored his dispensation for their nonconformity. The king, naturally irresolute, and doubtless sensible that he had made a bad return to those who had contributed so much towards his restoration, was induced, at the strong solicitation of lord Manchester, to promise that he would issue a declaration suspending the execution of the statute for three months. Clarendon, though he had been averse to some of the rigorous clauses inserted in the act of uniformity, was of opinion that once passed, it ought to be enforced without any connivance; and told the king likewise that it was not in his power to preserve those who did not comply with it from deprivation. Yet, as the king's word had been given, he advised him rather to issue such a declaration than to break his promise. But the bishops vehemently remonstrating against it, and intimating that they would not be parties to a violation of the law, by refusing to institute a clerk presented by the patron on an avoidance for want of conformity in the incumbent, the king gave way, and resolved to make no kind of concession. It is remarkable that the noble historian does not seem struck at the enormous and unconstitutional prerogative which a proclamation suspending the statute would have assumed.[1]

Instead of this very objectionable measure, the king adopted one less arbitrary, and more consonant to his own secret policy. He published a declaration in favour of liberty of conscience, for which no provision had been made, so as to redeem the promises he had held forth at his accession. Adverting to these, he declared that "as in the first place he had been zealous to settle the uniformity of the church of England in discipline, ceremony, and government, and should ever constantly maintain it; so as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereto, he should make it his special care, so far as in him lay, without invading the freedom of parliament, to incline their wisdom next approaching session to concur with him in making some such act for that purpose, as may enable him to exercise with a more universal satisfaction that power of dispensing, which he conceived to be inherent in him. (Parliamentary History 257.)

The aim of this declaration was to obtain from parliament a mitig

[1] Life of Clarendon, 159. He intimates that this begot a coldness in the bishops towards himself, which was never fully removed. Yet he had no reason to complain of them on his trial too Pepys's Diary, Sept. 3, 1662.

tion at least of all penal statutes in matters of religion, but more to serve the interests of catholic than of protestant nonconformity.[1] Except however the allusion to the dispensing power, which yet is very moderately alleged, there was nothing in it, according to our present opinions, that should have created offence. But the commons, on their meeting in February, 1663, presented an address, denying that any obligation lay on the king by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and slightly intimating that he possessed no such dispensing prerogative as was suggested. They strongly objected to the whole scheme of indulgence, as the means of increasing sectaries, and rather likely to occasion disturbance than to promote peace.[2] They complained in another address, against the release of Calamy, an eminent dissenter, who having been imprisoned for transgressing the act of uniformity, was irregularly set at liberty by the king's personal order. (19 Feb. Baxter, p. 429.) The king, undeceived as to the disposition of this loyal assembly to concur in his projects of religious liberty, was driven to more tedious and indirect courses in order to compass his end. He had the mortification of finding that the house of commons had imbibed, partly perhaps in consequence of this declaration, that jealous apprehension of popery, which had caused so much of his father's ill fortune. On this topic the watchfulness of an English parliament could never be long at rest. The notorious insolence of the Romish priests, who, proud of the court's favour, disdained to respect the laws enough to disguise themselves, provoked an address to the king, that they might be sent out of the kingdom; and bills were brought in to prevent the further growth of popery.[3]

Meanwhile, the same remedy, so infallible in the eyes of legislators, was not forgotten to be applied to the opposite disease of protestant dissent. Some had believed, of whom Clarendon seems to have been,

[1] Baxter intimates, 429., that some disagreement arose between the presbyterians and independents as to the toleration of popery, or rather, as he puts it, as to the active concurrence of the protestant dissenters in accepting such a toleration as should include popery. The latter, conformably to their general principles, were favourable to it; but the former would not make themselves parties to any relaxation of the penal laws against the church of Rome, leaving the king to act as he thought fit. By this stiffness it is very probable that they provoked a good deal of persecution from the court, which they might have avoided by falling into its views of a general indulgence.

[2] Parl. History, 269. An adjournment had been moved, and lost by 161 to 119. Journals, 25th Feb.

[3] Journs. 17 and 28 Mar. 1663. Parl. Hist. 264. Burnet, 274., says the declaration of indulgence was usually ascribed to Bristol, but in fact proceeded from the king, and that the opposition to it in the house was chiefly made by the friends of Clarendon. The latter tells us in his Life, 189., that the king was displeased at the insolence of the Romish party, and gave the judges general orders to convict recusants. The minister and historian either was, or pretended to be, his master's dupe; and, if he had any suspicions of what was meant as to religion, (as he must surely have had), is far too loyal to hint them. Yet the one circumstance he mentions soon after, that the countess of Castlemaine suddenly declared herself a catholic, was enough to open his eyes and those of the world.

The Romish partisans assumed the tone of high loyalty, as exclusively characteristic of their religion; but affected, at this time, to use great civility towards the church of England. A book, entitled Philanax Anglicus, published under the name of Bellamy, the second edition of which is in 1663, after a most flattering dedication to Sheldon, launches into virulent abuse of the presbyterians and of the reformation in general, as founded on principles adverse to monarchy. This indeed was common with the ultra or high-church party; but the work in question, though it purports to be written by a clergyman, is manifestly a shaft from the concealed bow of the Palatine Apollo.

ὁ δ' ἦϊε νυκὼς, τύξ ὤμοισιν ἔχων.

that all scruples of tender conscience in the presbyterian clergy being faction and hypocrisy, they would submit very quietly to the law, when they found all their clamour unavailing to obtain a dispensation from it. The resignation of 2000 beneficed ministers at once, instead of extorting praise, rather inflamed the resentment of their bigoted enemies; especially when they perceived that a public and perpetual toleration of separate worship was favoured by part of the court. Rumours of conspiracy and insurrection, sometimes false, but gaining credit from the notorious discontent both of the old commonwealth's party, and of many who had never been on that side, were sedulously propagated in order to keep up the animosity of parliament against the ejected clergy;[1] and these are recited as the pretext of an act passed in 1664 for suppressing seditious conventicles (the epithet being in this place wantonly and unjustly insulting), which inflicted on all persons above the age of sixteen, present at any religious meeting in other manner than is allowed by the practice of the church of England, where five or more persons beside the household should be present, a penalty of three months' imprisonment for the first offence, of six for the second, and of seven years' transportation for the third, on conviction before a single justice of peace.[2] This act, says Clarendon, if it had been vigorously executed, would no doubt have produced a thorough reformation. (P. 221.) Such is ever the language of the supporters of tyranny; when oppression does not succeed, it is because there has been too little of it. But those who suffered under this statute report very differently as to its vigorous execution. The gaols were filled, not only with ministers who had borne the brunt of former persecutions, but with the laity who attended them; and the hardship was the more grievous, that the act being ambiguously worded, its construction was left to a single magistrate, who was generally very adverse to the accused.

It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext; and thus to create a necessity for a legislature that will not retrace its steps, to pass still onward in the course of severity. In the next session, accordingly, held at Oxford in 1665, on account of the plague that ravaged the capital, we find a new and more inevitable blow aimed at the fallen church of Calvin. It was enacted, that all persons in holy orders who had not subscribed the act of uniformity, should swear that it is not

[1] See proofs of this in Ralph, 53., Rapin, p. 78. There was in 1663 a trifling insurrection in Yorkshire, which the government wished to have been more serious, so as to afford a better pretext for strong measures; as may be collected from a passage in a letter of Bennet to the duke of Ormond, where he says, "The county was in greater readiness to prevent the disorders than perhaps were to be wished; but it being the effect of their own care, rather than his majesty's commands, it is the less to be censured." Clarendon, 218., speaks of this as an important and extensive conspiracy; and the king dwelt on it in his next speech to the parliament. Parl. History, 289.

[2] 16 Car. II. c. 4. A similar bill had passed the commons in July, 1663, but hung some time in the upper house, and was much debated; the commons sent up a message (an irregular practice of those times) to request their lordships would expedite this and some other bills. The king seems to have been displeased at this delay: for he told them at their prorogation, that he had expected some bills against conventicles and distempers in religion, as well as the growth of popery, and should himself present some at their next meeting. Parliamentary History, 288. Burnet observes, that to empower a justice of peace to convict without a jury, was thought a great breach on the principles of the English constitution, 285. We have seen a little more of this since.

lawful, upon any pretence whatsoever, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavour any alteration of government in church or state. Those who refused this oath were not only made incapable of teaching in schools, but prohibited from coming within five miles of any city, corporate town, or borough sending members to parliament. (17 Car. II. c. 2).

This infamous statute did not pass without the opposition of the earl of Southampton, lord treasurer, and other peers. But archbishop Sheldon, and several bishops, strongly supported the bill, which had undoubtedly the sanction also of Clarendon's authority. (Burnet. Baxter.) In the commons, I do not find that any division took place; but an unsuccessful attempt was made to insert the word "legally" before commissioned; the lawyers, however, declared that this word must be understood.[1] Some of the nonconforming clergy took the oath upon this construction. But the far greater number refused. Even if they could have borne the solemn assertion of the principles of passive obedience in all possible cases, their scrupulous consciences revolted from a pledge to endeavour no kind of alteration in church and state; an engagement, in its extended sense, irreconcilable with their own principles in religion, and with the civil duties of Englishmen. Yet to quit the towns where they had long been connected, and where alone they had friends and disciples, for a residence in country villages, was an exclusion from the ordinary means of subsistence. The church of England had doubtless her provocations: but she made the retaliation much more than commensurate to the injury. No severity comparable to this cold-blooded persecution had been inflicted by the late powers, even in the ferment and fury of a civil war. Encouraged by this easy triumph, the violent party in the house of commons thought it a good opportunity to give the same test a more sweeping application. A bill was brought in imposing this oath upon the whole nation; that is, I presume, (for I do not know that its precise nature is any where explained), on all persons in any public or municipal trust. This however was lost on a division by a small majority.[2]

It has been remarked that there is no other instance in history, where men have suffered persecution on account of differences, which were admitted by those who inflicted it to be of such small moment. But, supposing this to be true, it only proves, what may perhaps be alleged as a sort of extenuation of these severe laws against nonconformists, that they were merely political, and did not spring from any theological bigotry. Sheldon, indeed, their great promoter, was so free from an intolerant zeal, that he is represented as a man who considered religion chiefly as an engine of policy. The principles of religious toleration had already gained considerable ground over mere bigotry; but were still obnoxious to the arbitrary temper of some politicians, and wanted perhaps experimental proof of their safety to

[1] Burnet. Baxter, Part III. p. 2. Neal. p. 652.

[2] Mr. Locke, in the "Letter from a Person of Quality to his Friend in the Country," printed in 1675, (see it in his works, or in Parl. Hist., vol. iv. Append., No. 5.) says it was lost by three votes, and mentions the persons. But the numbers in the Journals, October 27. 1665, appear to be 57 to 51.

recommend them to the caution of others. There can be no doubt that all laws against dissent and separation from an established church, those even of the inquisition, have proceeded in a greater or less degree from political motives; and these appear to me far less odious than the disinterested rancour of superstition. The latter is very common among the populace, and sometimes among the clergy. Thus the presbyterians exclaimed against the toleration of popery not as dangerous to the protestant establishment, but as a sinful compromise with idolatry; language which, after the first heat of the reformation had abated, was never so current in the Anglican church.[1] In the case of these statutes against nonconformists, revenge and fear seem to have been the unmixed passions that excited the church party against those whose former superiority they remembered, and whose disaffection and hostility it was impossible to doubt.

A joy so excessive and indiscriminating had accompanied the king's restoration, that no prudence or virtue in his government could have averted that reaction of popular sentiment, which inevitably follows the disappointment of unreasonable hope. Those who lay their account upon blessings which no course of political administration can bestow, live, according to the poet's comparison, like the sick man, perpetually changing posture in search of the rest which nature denies; the dupes of successive revolutions, sanguine as children with the novelties of politics, a new constitution, a new sovereign, a new minister, and as angry with the playthings when they fall short of their desires. What then was the discontent that must have ensued upon the restoration of Charles II.? The neglected cavalier, the persecuted presbyterian, the disbanded officer, had each his grievance; and felt that he was either in a worse situation than he had formerly been, or at least than he had expected to be. Though there were not the violent acts of military power which had struck every man's eyes under Cromwell, it cannot be said that personal liberty was secure, or that the magistrates had not considerable power of oppression, and that pretty unsparingly exercised towards those suspected of disaffection. The religious persecution was not only far more severe than it was ever during the commonwealth, but perhaps more extensively felt than

[1] A pamphlet, with Baxter's name subscribed, called Fair Warning, or XXV Reasons against Toleration and Indulgence of Popery, 1663, is a pleasant specimen of this *argumentum ad inferno*. "Being there is but one safe way to salvation, do you think that the protestant way is that way, or is it not? If it be not, why do you live in it? If it be, how can you find in your heart to give your subjects liberty to go another way? Can you, in your conscience, give them leave to go on in that course in which, in your conscience, you think you could not be saved?" Baxter however does not mention this little book in his life; nor does he there speak violently about the toleration of Romanists.

[2] The clergy had petitioned the house of commons in 1664, inter alia, "That for the better observation of the Lord's day, and for the promoting of conformity, you would be pleased to advance the pecuniary mulct of twelve pence for each absence from divine service, in proportion to the degree, quality, and ability of the delinquent; that so the penalty may be of force sufficient to conquer the obstinacy of the nonconformists." Wilkins's Concilia, iv. 580. Letters from Sheldon to the commissary of the diocese of Canterbury, in 1669 and 1670, occur in the same collection, pp. 558, 559., directing him to inquire about conventicles; and if they cannot be restrained by ecclesiastical authority, to apply to the next justice of the peace in order to put them down. A proclamation appears also from the king, enjoining magistrates to do this. In 1673, the archbishop writes a circular to his suffragans, directing them to proceed against such as keep schools without licence. P. 593.

See in Somers Tracts, vii. 586., a "true and faithful narrative" of the severities practised against nonconformists about this time. Baxter's Life is also full of proofs of persecutio; but the most complete register is in Calamy's account of the ejected clergy.

under Charles I. Though the monthly assessments for the support of the army ceased soon after the restoration, several large grants were made by parliament, especially during the Dutch war; and it appears, that in the first seven years of Charles II. the nation paid a greater sum in taxes than in any preceding period of the same duration. If then the people compared the national fruits of their expenditure, what a contrast they found, how deplorable a falling off in public honour and dignity since the days of the magnanimous usurper![1] They saw with indignation, that Dunkirk, acquired by Cromwell, had been chaffered away by Charles (a transaction justifiable perhaps on the mere balance of profit and loss, but certainly derogatory to the pride of a great nation); that a war needlessly commenced had been carried on with much display of bravery in our seamen and their commanders, but no sort of good conduct in the government; and that a petty northern potentate, who would have trembled at the name of the commonwealth, had broken his faith towards us out of mere contempt of our inefficiency.

These discontents were heightened by the private conduct of Charles, if the life of a king can in any sense be private, by a dissoluteness and contempt of moral opinion, which a nation, still in the main grave and religious, could not endure. The austere character of the last king had repressed to a considerable degree the common vices of a court, which had gone to a scandalous excess under James. But the cavaliers in general affected a profligacy of manners, as their distinction from the fanatical party, which gained ground among those who followed the king's fortunes in exile, and became more flagrant after the restoration. Anecdotes of court excesses, which required not the aid of exaggeration, were in daily circulation through the coffee-houses; those who cared least about the vice, not failing to inveigh against the scandal. It is in the nature of a limited monarchy that men should censure very freely the private lives of their princes, as being more exempt from that immoral servility which blinds itself to the distinctions of right and wrong in elevated rank. And as a voluptuous court will always appear prodigal, because all expense in vice is needless, they had the mortification of believing that the public revenues were wasted on the vilest associates of the king's debauchery. We are, however, much indebted to the memory of Barbara, duchess of Cleveland, Louisa, duchess of Portsmouth, and Mrs. Eleanor Gwyn. We owe a tribute of gratitude to the Mays, the Killigrews, the Chiffinches, and the Grammonts. They played a serviceable part in ridding the kingdom of its besotted loyalty. They saved our forefathers from the star-chamber and the high-commission court; they laboured in their vocation against standing armies and corruption; they pressed forward the great ultimate security of English freedom, the expulsion of the house of Stuart.[2]

[1] Pepys observes, 12 July, 1667, "how every body now-a-days reflect upon Oliver and commend him, what brave things he did, and made all the neighbour princes fear him."

[2] The Mémoires de Grammont are known to every body; and are almost unique in their kind, not only for the grace of their style and the vivacity of their pictures, but for the happy ignorance in which the author seems to have lived, that any one of his readers could imagine that there are such things as virtue and principle in the world. In the delirium of thoughtless voluptuousness they resemble some of the memoirs about the end of Louis XV.'s reign, and somewhat

Among the ardent loyalists who formed the bulk of the present parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus, round which the lesser factions that circumstances should produce might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. The sense of personal importance, the desire of occupation in business (a very characteristic propensity of the English gentry), the various inducements of private passion and interest, bring forward so many active spirits, that it was, even in that age, as reasonable to expect that the ocean should be always tranquil, as that a house of commons should continue long to do the king's bidding, with any kind of unanimity or submission. Nothing can more demonstrate the incompatibility of the tory scheme, which would place the virtual and effective, as well as nominal, administration of the executive government in the sole hands of the crown, with the existence of a representative assembly, than the history of this long parliament of Charles II. None has ever been elected in circumstances so favourable for the crown, none ever brought with it such high notions of prerogative; yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The methods of bribery, to which the court had largely recourse, though they certainly diverted some of the measures, and destroyed the character, of this opposition, proved in the end like those dangerous medicines, which palliate the instant symptoms of a disease that they aggravate. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the house of commons matured and extended those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times; and as the exercise of these functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable or even fundamental; and were prepared for that more perfect settlement of the constitution on a more republican basis, which took place after the revolution. The reign of Charles II., though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament.

later; though I think, even in these, there is generally some effort, here and there, at moral censure, or some affectation of sensibility. *They*, indeed, have always an awful moral; and in the light portraits of the court of Versailles, such, sometimes, as we might otherwise almost blush to peruse, we have before us the hand-writing on the wall, the winter whirlwind, hushed in its grim repose, and expecting its prey, the vengeance of an oppressed people, and long-forbearing Deity. No such retribution fell on the courtiers of Charles II., but they earned in their own age, what has descended to posterity, though possibly very indifferent to themselves, the disgust and aversion of all that was respectable among mankind.

The commons took advantage of the pressure, which the war with Holland brought on the administration, to establish two very important principles on the basis of their sole right of taxation. The first of these was the appropriation of supplies to limited purposes. This indeed was so far from an absolute novelty, that it found precedents in the reigns of Richard II. and Henry IV.; a period when the authority of the house of commons was at a very high pitch. No subsequent instance, I believe, was on record till the year 1624, when the last parliament of James I., at the king's own suggestion, directed their supply for the relief of the Palatinate to be paid into the hands of commissioners named by themselves. There were cases of a similar nature in the year 1641, which, though of course they could no longer be upheld as precedents, had accustomed the house to the idea, that they had something more to do than simply to grant money, without any security or provision for its application. In the session of 1665, accordingly, an enormous supply, as it then appeared, of 1,250,000*l.*, after one of double that amount in the preceding year, having been voted for the Dutch war,[1] sir George Downing, one of the tellers of the exchequer, introduced into the subsidy bill a proviso, that the money raised by virtue of that act should be applicable only to the purposes of the war. Clarendon inveighed with fury against this, as an innovation derogatory to the honour of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily upon his better security for speedy repayment, insisted that it should not be thrown out.[2] That supplies, granted by parliament, are only to be expended for particular objects specified by itself, became, from this time, an undisputed principle, recognised by frequent, and at length constant practice. It drew with it the necessity of estimates regularly laid before the house of commons; and by exposing the management of the public revenues, has given to parliament, not only a real and effective control over an essential branch of the executive administration, but, in some measure, has rendered them partakers in it.[3]

It was a consequence of this right of appropriation, that the house of commons should be able to satisfy itself as to the expenditure of their monies in the services for which they were voted. But they might claim a more extensive function, as naturally derived from their power of opening and closing the public purse, that of investigating the wisdom, faithfulness and economy with which their grants had been expended. For this too there was some show of precedents in the ancient days of Henry IV.; but what undoubtedly had most influence was the recollection, that during the late civil war, and in the times of the commonwealth, the house had superintended, through its committees, the whole receipts and issues of the national treasury. This had not been much practised since the restoration. But in the year 1666, the large cost and indifferent success of the Dutch war begetting vehe-

[1] This was carried on a division by 172 to 102. Journs., 25 Nov., 1665. It was to be raised "in a regulated subsidiary way, reducing the same to a certainty in all counties, so as no person, for his real or personal estate, be exempted." They seem to have had some difficulty in raising this enormous subsidy. Parl. Hist. 305.

[2] 17 Car. II. c. 1. The same clause is repeated next year, and has become regular.

[3] Life of Clarendon, p. 315. Hatsell's Precedents, iii. 80.

ment suspicions, not only of profuseness but of diversion of the public money from its proper purposes, the house appointed a committee to inspect the accounts of the officers of the navy, ordnance and stores, which were laid before them, as it appears, by the king's direction. This committee after some time having been probably found deficient in powers, and particularly being incompetent to administer an oath, the house determined to proceed in a more novel and vigorous manner; and sent up a bill, nominating commissioners to inspect the public accounts, who were to possess full powers of inquiry, and to report such as they should find to have broken their trust. The immediate object of this inquiry, so far as appears from lord Clarendon's mention of it, was rather to discover whether the treasurers had not issued money without legal warrant, than to enter upon the details of its expenditure. But that minister, bigoted to his tory creed of prerogative, thought it the highest presumption for a parliament to intermeddle with the course of government. He spoke of this bill as an encroachment and usurpation that had no limits, and pressed the king to be firm in his resolution never to consent to it.[1] Nor was the king less averse to a parliamentary commission of this nature, as well from a jealousy of its interference with his prerogative, as from a consciousness which Clarendon himself suggests, that great sums had been issued by his orders, which could not be put in any public account; that is, (for we can give no other interpretation), that the monies granted for the war, and appropriated by statute to that service, had been diverted to supply his wasteful and debauched course of pleasures.[2] It was the suspicion, or rather private knowledge of this criminal breach of trust, which had led to the bill in question. But such a slave was Clarendon to his narrow prepossessions, that he would rather see the dissolute excessess which he abhorred suck nourishment from that revenue which had been allotted to maintain the national honour and interests, and which, by its deficiencies thus aggravated, had caused even in this very year the navy to be laid up, and the coasts to be left defenceless, than suffer them to be restrained by the only power to which thoughtless luxury would submit. He opposed the bill therefore in the house of lords, as he confesses, with

[1] Life of Clarendon, p. 368. Burnet observes it was looked upon at the time as a great innovation, p. 335.

[2] Pepys's Diary has lately furnished some things worthy to be extracted. "Mr. W. and I by water to Whitehall, and there at sir George Carteret's lodgings sir William Coventry met; and we did debate the whole business of our accounts to the parliament; where it appears to us that the charge of the war from Sept. 1. 1664, to this Michaelmas, will have been but 3,200,000*l.*, and we have paid in that time somewhat about 2,200,000*l.*, so that we owe about 900,000.: but our method of accounting, though it cannot, I believe, be far wide from the mark, yet will not abide a strict examination, if the parliament should be troublesome. Here happened a pretty question of sir William Coventry, whether this account of ours will not put my lord treasurer to a difficulty to tell what has become of all the money the parliament have given in this time for the war, which hath amounted to about 4,000,000*l.*, which nobody there could answer; but I perceive they did doubt what his answer could be." Sept. 23. 1666.—The money granted the king for the war he afterwards, Oct. 10, reckons at 5,590,000*l.*, and the debt at 900,000*l.* The charge stated only at 3,200.000*l.* "So what is become of all this sum, 2,390,000*l.*?" He mentions afterwards, Oct. 8, the proviso in the poll-tax bill, that there shall be a committee of nine persons to have the inspection on oath of all the accounts of the money given and spent for the war, "which makes the king and court mad; the king having given order to my lord chamberlain to send to the play-houses and brothels, to bid all the parliament men that were there to go to the parliament presently; but it was carried against the court by thirty or forty voices." It was thought, he says, Dec. 12, that above 400,000*l.* had gone into the privy purse since the war.

much of that intemperate warmth which distinguished him, and with a contempt of the lower house and its authority, as imprudent in respect to his own interests as it was unbecoming and unconstitutional. The king prorogued parliament while the measure was depending; but in hopes to pacify the house of commons, promised to issue a commission under the great seal for the examination of public accountants (Life of Clarendon, p. 392.); an expedient which was not likely to bring more light than suited his purpose. But it does not appear that this royal commission, though actually prepared and sealed, was ever carried into effect; for in the ensuing session, the great minister's downfall having occurred in the meantime, the house of commons brought forward again their bill, which passed into a law. It invested the commissioners therein nominated with very extensive and extraordinary powers, both as to auditing public accounts, and investigating the frauds that had taken place in the expenditure of money, and employment of stores. They were to examine upon oath, to summon inquests if they thought fit, to commit persons disobeying their orders to prison without bail, to determine finally on the charge and discharge of all accountants; the barons of the exchequer, upon a certificate of their judgment, were to issue process for recovering money to the king's use, as if there had been an immediate judgment of their own court. Reports were to be made of the commissioner's proceedings from time to time to the king and to both houses of parliament. None of the commissioners were members of either house. The king, as may be supposed, gave way very reluctantly to this interference with his expenses. It brought to light a great deal of abuse and misapplication of the public revenues, and contributed doubtless in no small degree to destroy the house's confidence in the integrity of government, and to promote a more jealous watchfulness of the king's designs.[1] At the next meeting of parliament, in Oct. 1669, sir George Carteret, treasurer of the navy, was expelled the house, for issuing money without legal warrant.

Sir Edward Hyde, whose influence had been almost annihilated in the last years of Charles I. through the inveterate hatred of the queen and those who surrounded her, acquired by degrees the entire confidence of the young king, and baffled all the intrigues of his enemies. Guided by him, in all serious matters, during the latter years of his exile, Charles followed his counsels almost implicitly in the difficult crisis of the restoration. The office of chancellor and the title of earl of Clarendon were the proofs of the king's favour; but in effect, through the indolence and ill health of Southampton, as well as their mutual friendship, he was the real minister of the crown.[2] By the

[1] 19 & 20 Car. II. c. 1. Burnet, p. 374. They reported unaccounted balances of 1,509,161*l.*, besides much that was questionable in the payments. But, according to Ralph, p. 177, the commissioners had acted with more technical rigour than equity, surcharging the accountants for all sums not expended since the war began, though actually expended for the purposes of preparation.

[2] Burnet, p. 130. Southampton left all the business of the treasury, according to Burnet, p. 131, in the hands of sir Philip Warwick, "a weak but incorrupt man." The king, he says, chose to put up with his contradiction rather than make him popular by dismissing him. But in fact, as we see by Clarendon's instance, the king retained his ministers long after he was displeased with them. Southampton's remissness and slowness, notwithstanding his integrity, Pepys says, was the cause of undoing the nation as much as any thing: "yet, if I knew all the difficulties he has lain under, and his instrument sir Philip Warwick, I might be of another

clandestine marriage of his daughter with the duke of York, he changed one brother from an enemy to a sincere and zealous friend, without forfeiting the esteem and favour of the other. And though he was wise enough to dread the invidiousness of such an elevation, yet for several years it by no means seemed to render his influence with the king less secure.[1]

mind," May 16, 1667.—He was willing to have done something, Clarendon tells us, p. 415, to gratify the presbyterians; on which account the bishops thought him not enough affected to the church. His friend endeavours to extenuate the heinous sin of tolerant principles.

[1] The behaviour of lord Clarendon on this occasion was so extraordinary, that no credit could have been given to any other account than his own. The duke of York, he says, informed the king of the affection and friendship that had long been between him and the young lady; that they had been long contracted, and that she was with child; and therefore requested his majesty's leave that he might publicly marry her. The marquis of Ormond by the king's order communicated this to the chancellor, who "broke out into an immoderate passion against the wickedness of his daughter; and said with all imaginable earnestness, that as soon as he came home he would turn her out of his house as a strumpet to shift for herself, and would never see her again. They told him that his passion was too violent to administer good counsel to him; that they thought that the duke was married to his daughter, and that there were other measures to be taken than those which the disorder he was in had suggested to him. Whereupon he fell into new commotions; and said, If that were true, he was well prepared to advise what was to be done; that he had much rather his daughter should be the duke's whore than his wife: in the former case, nobody could blame him for the resolution he had taken, for he was not obliged to keep a whore for the greatest prince alive; and the indignity to himself he would submit to the good pleasure of God. But if there were any reason to suspect the other, he was ready to give a positive judgment, in which he hoped their lordships would concur with him, that the king should immediately cause the woman *to be sent to the Tower and cast into the dungeon*, under so strict a guard that no person living should be admitted to come to her; and then that *an act of parliament should be immediately passed for cutting off her head, to which he would not only give his consent, but would very willingly be the first man that should propose it.* And whoever knew the man, will believe that he said all this very heartily." Lord Southampton, he proceeds to inform us, on the king's entering the room at the time, said, very naturally, that the chancellor was mad, and had proposed such extravagant things, that he was no more to be consulted with. This however did not bring him to his senses; for he repeated his strange proposal of "sending her presently to the Tower, and the rest;" imploring the king to take this course, as the only expedient that could free him from the evils that this business would otherwise bring upon him.

That any man of sane intellects should fall into such an extravagance of passion, is sufficiently wonderful; that he should sit down in cool blood several years afterwards to relate it, is still more so; and perhaps we shall carry our candour to an excess, if we do not set down the whole of this scene to overacted hypocrisy. Charles II., we may be very sure, could see it in no other light. And here I must take notice, by the way, of the singular observation the worthy editor of Burnet has made: "King Charles's conduct in this business was excellent throughout; that of Clarendon *worthy an ancient Roman.*" We have indeed a Roman precedent for subduing the sentiments of nature, rather than permitting a daughter to incur disgrace through the passions of the great; but I think Virginius would not quite have understood the feelings of Clarendon. Such virtue was more like what Montesquieu calls, "l'héroïsme de l'esclavage," and was just fit for the court of Gondar. But with all this violence that he records of himself, he deviates greatly from the truth: "The king (he says) afterwards spoke every day about it, and told the chancellor that he must behave himself wisely, for that the thing was remediless, and that his majesty knew that they were married; which would quickly appear to all men, who knew that nothing could be done upon it. In this time the chancellor had conferred with his daughter, without anything of indulgence, and not only discovered that they were unquestionably married, but *by whom, and who were present at it, who would be ready to avow it;* which pleased him not, though it diverted him from using some of that rigour which he intended. And he saw no other remedy could be applied but that which he had proposed to the king, who thought of nothing like it." Life of Clarendon, 29. et post.

Every one would conclude from this, that a marriage had been solemnized, if not before their arrival in England, yet before the chancellor had this conference with his daughter. It appears, however, from the duke of York's declaration in the books of the privy council, quoted by Ralph, p. 40., that he was contracted to Ann Hyde on the 24th of Nov., 1659, at Breda; and after that time lived with her as his wife, though very secretly; he married her 3rd Sept. 1660, according to the English ritual, lord Ossory giving her away. The first child was born Oct. 22, 1660. Now whether the contract were sufficient to constitute a valid marriage, will depend on two things; first, upon the law existing at Breda, secondly, upon the applicability of what is commonly called the rule of the lex loci, to a marriage between such persons according to the received notions of English lawyers in that age. But, even admitting

Both in their characters, however, and turn of thinking, there was so little conformity between Clarendon and his master, that the continuance of his ascendancy can only be attributed to the power of early habit over the most thoughtless tempers. But it rarely happens that kings do not ultimately shake off these fetters, and release themselves from the sort of subjection which they feel in acting always by the same advisers. Charles, acute himself and cool-headed, could not fail to discover the passions and prejudices of his minister, even if he had wanted the suggestion of others who, without reasoning on such broad principles as Clarendon, were perhaps his superiors in judging of temporary business. He wished too, as is common, to depreciate a wisdom, and to suspect a virtue, which seemed to reproach his own vice and folly. Nor had Clarendon spared those remonstrances against the king's course of life, which are seldom borne without impatience or resentment. He was strongly suspected by the king as well as his courtiers (though, according to his own account, without any reason) of having promoted the marriage of miss Stewart with the duke of Richmond.[1] But above all he stood in the way of projects, which, though still probably unsettled, were floating in the king's mind. No one was more zealous to uphold the prerogative at a height where it must overtop and chill with its shadow the privileges of the people. No one was more vigilant to limit the functions of parliament, or more desirous to see them confiding and submissive. But there were landmarks which he could never be brought to transgress. He would prepare the road for absolute monarchy, but not introduce it; he would assist to batter down the walls, but not to march into the town. His notions of what the English constitution ought to be appear evidently to have been derived from the times of Elizabeth and James I., to which he frequently refers with approbation. In the history of that age, he found much that could not be reconciled to any

all this, it is still manifest that Clarendon's expressions point to an actual celebration, and are consequently intended to mislead the reader. Certain it is, that at the time the contract seems to have been reckoned only an honorary obligation. James tells us himself (Macpherson's Extracts, p. 17.) that he promised to marry her; and "though when he asked the king for his leave, he refused and dissuaded him from it, yet at last he opposed it no more, and the duke married her privately, and owned it some time after." His biographer, writing from his own manuscript, adds, "It may well be supposed that my lord chancellor did his part, but with great caution and circumspection, to soften the king in that matter which in every respect seemed so much for his own advantage." Life of James, 387. And Pepys inserts in his diary, Feb. 23. 1661, "Mr. H. told me how my lord chancellor had lately got the duke of York and duchess, and her woman, my lord Ossory and a doctor, to make oath before most of the judges of the kingdom, concerning all the circumstances of their marriage. And, in fine, it is confessed that they were not fully married till about a month or two before she was brought to bed; but that they were contracted long before, and [were married] time enough for the child to be legitimate. But I do not hear that it was put to the judges to determine that it was so or not." He had said before that lord Sandwich told him, 17th Oct. 1660, "the king wanted him [the duke] to marry her, but he would not." This seems at first sight inconsistent with what James says himself. But at this time, though the private marriage had really taken place, he had been persuaded by a most infamous conspiracy of some profligate courtiers that the lady was of a licentious character, and that Berkeley, afterwards lord Falmouth, had enjoyed her favours. Life of Clar., 33. It must be presumed that those men knew only of a contract which they thought he could break. Hamilton, in the Memoirs of Grammont, speaks of this transaction with his usual levity, though the parties showed themselves as destitute of spirit as of honour and humanity. Clarendon, we must believe (and the most favourable hypothesis for him is to give up his veracity), would not permit his daughter to be made the victim of a few perjured debauchees, and of her husband's fickleness or credulity.

[1] Hamilton mentions this as the current rumour of the court, and Burnet has done the same. But Clarendon himself denies that he had any concern in it, or any acquaintance with the parties. He wrote in too humble a strain to the king on the subject. Life of Clar. p. 454.

liberal principles of government. But there were two things which he certainly did not find; a revenue capable of meeting an extraordinary demand without parliamentary supply, and a standing army. Hence he took no pains, if he did not even, as is asserted by Burnet, discourage the proposal of others, to obtain such a fixed annual revenue for the king on the restoration, as would have rendered it very rarely necessary to have recourse to parliament,[1] and did not advise the keeping up any part of the army. That a few troops were retained, was owing to the duke of York. Nor did he go the length that was expected in procuring the repeal of all the laws that had been enacted in the long parliament.[2]

These omissions sank deep in Charles's heart, especially when he found that he had to deal with an unmanageable house of commons, and must fight the battle for arbitrary power; which might have been achieved, he thought, without a struggle by his minister. There was still less hope of obtaining any concurrence from Clarendon in the king's designs as to religion. Though he does not once hint at it in his writings, there can be little doubt that he must have suspected his master's inclination towards the church of Rome. The duke of York considered this as the most likely cause of his remissness in not sufficiently advancing the prerogative. He was always opposed to the various schemes of a general indulgence towards popery, not only from his strong protestant principles and his dislike of all toleration, but from a prejudice against the body of the English catholics, whom he thought to arrogate more on the ground of merit than they could claim. That interest, so powerful at court, was decidedly hostile to the chancellor; for the Duke of York, who strictly adhered to him, if he had not kept his change of religion wholly secret, does not seem to have hitherto formed any avowed connection with the popish party.[3]

This estrangement of the king's favour is sufficient to account for

[1] Burnet says that Southampton had come into a scheme of obtaining 2,000,000*l.* as the annual revenue: which was prevented by Clarendon, lest it should put the king out of need of parliaments. This the king found out, and hated him mortally for it. P. 223. It is the fashion to discredit all Burnet says. But observe what we may read in Pepys: "Sir W. Coventry did tell me it as the wisest thing that was ever said to the king by any statesman of his time; and it was by my lord treasurer that is dead, whom, I find, he takes for a very great statesman, that when the king did show himself forward for passing the act of indemnity, he did advise the king that he would hold his hand in doing it, till he had got his power restored that had been diminished by the late times, and his revenue settled in such a manner as he might depend upon himself without resting upon parliaments, and then pass it. But my lord chancellor, who thought he could have the command of parliaments for ever, because for the king's sake they were awhile willing to grant all the king desired, did press for its being done; and so it was, and the king from that time able to do nothing with the parliament almost." Mar. 20. 1669. Rari quippe boni! Neither Southampton nor Coventry make the figure in this extract we should wish to find; yet who were their superiors for integrity and patriotism under Charles II.?

[2] Macpherson's Extracts from Life of James, 17, 18. Compare Innes's Life of James, published by Clarke, i. 391. 393. In the former work it is said that Clarendon, upon Venner's insurrection, advised that the guards should not be disbanded. But this seems to be a mistake in copying: for Clarendon read the duke of York. Pepys however, who heard all the gossip of the town, mentions the year after that the chancellor thought of raising an army, with the duke as general. Dec. 22. 1661.

[3] The earl of Bristol, with all his constitutional precipitancy, made a violent attack on Clarendon, by exhibiting articles of treason against him in the house of lords in 1663; believing, no doubt, that the schemes of the intriguers were more mature, and the king more alienated, than was really the case; and thus disgraced himself at court instead of his enemy. Parliamentary History, 276. Life of Clar. 209. Before this time Pepys had heard that the chancellor had lost the king's favour, and that Bristol, with Buckingham and two or three more, ruled him. May 15. 1663.

Clarendon's loss of power; but his entire ruin was rather accomplished by a strange coalition of enemies, which his virtues, or his errors and infirmities, had brought into union. The cavaliers hated him on account of the act of indemnity, and the presbyterians for that of uniformity. Yet the latter were not in general so eager in his prosecution as the others.[1] But he owed great part of the severity with which he was treated to his own pride and ungovernable passionateness, by which he had rendered very eminent men in the house of commons implacable, and to the language he had used as to the dignity and privileges of the house itself.[2] A sense of this eminent person's great

[1] A motion to refer the heads of charge against Clarendon to a committee was lost by 194 to 128; Seymour and Osborne telling the noes, Birch and Clarges the ayes. Com. Journ. Nov. 6. 1667. These names show how parties ran. Seymour and Osborne being high-flying cavaliers, and Birch a presbyterian. A motion that he be impeached for treason on the first article was lost by 172 to 103, the two former tellers for the ayes: Nov. 9. In the Harleian MS. 881. we have a copious account of the debates on this occasion, and a transcript in No. 1218. Sir Heneage Finch spoke much against the charge of treason; Maynard seems to have done the same. A charge of secret correspondence with Cromwell was introduced merely ad invidiam, the prosecutors admitting that it was pardoned by the act of indemnity, but wishing to make the chancellor plead that; Maynard and Hampden opposed it, and it was given up out of shame without a vote. Vaughan, afterwards chief-justice, argued that counselling the king to govern by a standing army was treason at common law, and seems to dispute what Finch laid down most broadly, that there can be no such thing as a common law treason; relying on a passage in Glanville, where "seductio domini regis" is said to be treason. Maynard stood up for the opposite doctrine. Waller and Vaughan argued that the sale of Dunkirk was treason, but the article passed without declaring it to be so; nor would the word have appeared probably in the impeachment, if a young lord Vaughan had not asserted that he could prove Clarendon to have betrayed the king's councils, on which an article to that effect was carried by 161 to 89. Garraway and Littleton were forward against the chancellor; but Coventry seems to have taken no great part. See Pepys's Diary, Dec. 3rd and 6th, 1667. Baxter also says that the presbyterians were by no means strenuous against Clarendon, but rather the contrary, fearing that worse might come for the country, as giving him credit for having kept off military government. Baxter's Life, part iii. 21. This is very highly to the honour of that party whom he had so much oppressed, if not betrayed. "It was a notable providence of God," he says, "that this man, who had been the great instrument of state, and done almost all, and had dealt so cruelly with the nonconformists, should thus by his own friends be cast out and banished: while those that he had persecuted were the most moderate in his cause, and many for him. And it was a great ease that befel the good people throughout the land by his dejection. For his way was to decoy men into conspiracies or to pretend plots, and upon the rumour of a plot the innocent people of many countries were laid in prison, so that no man knew when he was safe. Whereas since then, though laws have been made more and more severe, yet a man knoweth a little better what he is to expect, when it is by a law that he is to be tried." Sham plots there seem to have been; but it is not reasonable to charge Clarendon with inventing them. Ralph. 122.

[2] In his wrath against the proviso inserted by sir George Downing, as above mentioned, in the bill of supply, Clarendon told him, as he confesses, that the king could never be well served while fellows of his condition were admitted to speak as much as they had a mind; and that in the best times such presumptions had been punished with imprisonment by the lords of the council, without the king's taking notice of it, 321. The king was naturally displeased at this insolent language towards one of his servants, a man who had filled an eminent station, and done services, for a suggestion intended to benefit the revenue. And it was a still more flagrant affront to the house of commons, of which Downing was a member, and where he had proposed this clause, and induced the house to adopt it.

Coventry told Pepys "many things about the chancellor's dismissal, not fit to be spoken; and yet not any unfaithfulness to the king, but instar omnium, that he was so great at the council-board and in the administration of matters there was no room for any body to propose any remedy for what was amiss, or to compass any thing, though never so good for the kingdom, unless approved of by the chancellor; he managing all things with that greatness which now will be removed, that the king may have the benefit of others' advice." Sept. 2. 1667. His own memoirs are full of proofs of this haughtiness and intemperance. He set himself against sir William Coventry, and speaks of a man as able and virtuous as himself, with marked aversion. See too life of James, 398. Coventry, according to this writer, 431, was the chief actor in Clarendon's impeachment, but this seems to be a mistake; though he was certainly desirous of getting him out of place.

The king, Clarendon tells us, 438., pretended that the anger of parliament was such, and their power too, as it was not in his power to save him. The fallen minister desired him not to

talents, as well as general integrity and conscientiousness on the one hand, an indignation at the king's ingratitude, and the profligate counsels of those who supplanted him, on the other, have led most writers to overlook his faults in administration, and to treat all the articles of accusation against him as frivolous or unsupported. It is doubtless impossible to justify the charge of high treason, on which he was impeached; but there are matters that never were or could be disproved; and our own knowledge enables us to add such grave accusations as must show Clarendon's unfitness for the government of a free country. (State Trials, vi. 318. Parl. Hist.)

1. It is the fourth article of his impeachment, that he had "advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner." This was undoubtedly true. There was some ground for apprehension on the part of the government from those bold spirits who had been accustomed to revolutions, and drew encouragement from the vices of the court, and the embarrassments of the nation. Ludlow and Algernon Sidney, about the year 1665, had projected an insurrection, the latter soliciting Louis XIV. and the pensionary of Holland for aid.[1] Many officers of the old army, Wildman, Creed, and others, suspected, perhaps justly, of such conspiracies, had been illegally detained in prison for several years, and only recovered their liberty on Clarendon's dismissal.[2] He had too much encouraged the hateful race of informers, though he admits that it had grown a trade by which men got money, and that many were committed on slight grounds.[3] Thus colonel Hutchinson died in the close confinement of a remote prison, far more probably on account of his share in the death of Charles I., from which the act of indemnity had discharged him, than any just pretext of treason.[4] It was difficult to obtain a habeas corpus from some of the judges in this reign. But to elude that provision by removing men out of the kingdom, was such an offence against the constitution, as may be thought enough to justify the impeachment of any minister.

2. The first article, and certainly the most momentous, asserts, "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." This was prodigiously exaggerated; yet there was some foundation for a part of it. In the disastrous summer of 1667, when the Dutch fleet had insulted our coasts, and burned our ships in the Medway, the exchequer being

fear the power of parliament," "which was more or less, or nothing, as he pleased to make it." So preposterous as well as unconstitutional a way of talking could not but aggravate his unpopularity with that great body he pretended to contemn.

[1] Ludlow, iii. 118. 165. et post. Clar. Life, 290. Burnet, 226. Œuvres de Louis XIV. ii. 204.

[2] Harris's Lives, v. 28. Biographia Brit. art. Harrington. Life of James, 396. Somers Tracts, vii. 530. 534.

[3] See Kennet's Register, 757. Ralph, 78. et post, Harris's Lives, v. 182., for the proofs of this.

[4] Mem. of Hutchinson, 303. It seems however that he was suspected of some concern with an intended rising in 1663, though nothing was proved against him. Miscellanea Aulica, 319.

empty, it was proposed in council to call together immediately the parliament, which then stood prorogued to a day at the distance of some months. Clarendon, who feared the hostility of the house of commons towards himself, and had pressed the king to dissolve it, maintained that they could not legally be summoned before the day fixed; and, with a strange inconsistency, attaching more importance to the formalities of law than to its essence, advised that the counties where the troops were quartered should be called upon to send in provisions, and those where there were no troops to contribute money, which should be abated out of the next taxes. And he admits that he might have used the expression of raising contributions, as in the late civil war. This unguarded and unwarrantable language, thrown out at the council-table where some of his enemies were sitting, soon reached the ears of the commons, and, mingled up with the usual misrepresentations of faction, was magnified into a charge of high treason.[1]

3. The eleventh article charged lord Clarendon with having advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, for no greater value than the ammunition, artillery, and stores were worth. The latter part is generally asserted to be false. The sum received is deemed the utmost that Louis would have given, who thought he had made a hard bargain. But it is very difficult to reconcile what Clarendon asserts in his defence, and much more at length in his Life, (that the business of Dunkirk was entirely decided before he had any thing to do in it, by the advice of Albemarle and Sandwich,) with the letters of d'Estrades, the negotiator in this transaction on the part of France. In these letters, written at the time to Louis XIV., Clarendon certainly appears not only as the person chiefly concerned, but as representing himself almost the only one of the council favourable to the measure, and having to overcome the decided repugnance of Southampton, Sandwich, and Albemarle.[2] I cannot indeed see any other explanation than that he magnified the obstacles in the way of this treaty, in order to obtain better terms; a manage-

[1] Life of Clar. 424. Pepys says, the parliament was called together "against the duke of York's mind flatly, who did rather advise the king to raise money as he pleased; and against the chancellor, who told the king that queen Elizabeth did do all her business in 1588 without calling a parliament, and so might he do for any thing he saw." June 25. 1667. He probably got this from his friend sir W. Coventry.

[2] Ralph, 78., &c. The overture came from Clarendon, the French having no expectation of it. The worst was that, just before, he had dwelt in a speech to parliament on the importance of Dunkirk. This was on May 19. 1662. It appears by Louis XIV.'s own account, which certainly does not tally with some other authorities, that Dunkirk had been so great an object with Cromwell, that it was the stipulated price of the English alliance. Louis, however, was vexed at this, and determined to recover it at any price: il est certain que je ne pouvois trop donner pour racheter Dunkerque. He sent d'Estrades accordingly to England in 1661, directing him to make this his great object. Charles told the ambassador that Spain had made him great offers, but he would rather treat with France. Louis was delighted at this; and though the sum asked was considerable, 5,000,000 livres, he would not break off, but finally concluded the treaty for 4,000,000, payable in three years; nay, saved 500,000 without its being found out by the English, for a banker having offered them prompt payment at this discount, they gladly accepted it; but this banker was a person employed by Louis himself, who had the money ready. He had the greatest anxiety about this affair; for the city of London deputed the lord mayor to offer any sum so that Dunkirk might not be alienated. (Œuvres de Louis XIV. i. 167. If this be altogether correct, the king of France did not fancy he had made so bad a bargain; and indeed, with his projects, if he had the money to spare, he could not think so. Compare the Mémoires d'Estrades, and the supplement to the iii. vol. of Clarendon State Papers. The historians are of no value, except as they copy from some of these original testimonies.

ment not very unusual in diplomatical dealing, but, in the degree at least to which he carried it, scarcely reconcilable with the good faith we should expect from this minister. For the transaction itself, we can hardly deem it honourable or politic. The expense of keeping up Dunkirk, though not trifling, would have been willingly defrayed by parliament; and could not well be pleaded by a government which had just encumbered itself with the useless burthen of Tangier. That its possession was of no great direct value to England must be confessed; but it was another question whether it ought to have been surrendered into the hands of France.

4. This close connexion with France is indeed a great reproach to Clarendon's policy, and was the spring of mischiefs to which he contributed, and which he ought to have foreseen. What were the motives of these strong professions of attachment to the interests of Louis XIV. which he makes in some of his letters, it is difficult to say, since he had undoubtedly an ancient prejudice against that nation and its government. I should incline to conjecture that his knowledge of the king's unsoundness in religion led him to keep at a distance from the court of Spain, as being far more zealous in its popery, and more connected with the jesuit faction, than that of France; and this possibly influenced him also with respect to the Portuguese match, wherein, though not the first adviser, he certainly took much interest; an alliance as little judicious in the outset, as it proved eventually fortunate. (Life of Clar. 78. Of James, 393.) But the capital misdemeanour that he committed in this relation with France was the clandestine solicitation of pecuniary aid for the king. He first taught a lavish prince to seek the wages of dependence in a foreign power to elude the control of parliament by the help of French money.[1] The purpose for which this aid was asked, the succour of Portugal, might be fair and laudable; but the precedent was most base, dangerous, and abominable. A king who had once tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterwards of abstaining from it, than a dog from his greasy offal.

These are the errors of Clarendon's political life; which, besides his notorious concurrence in all measures of severity and restraint towards the nonconformists, tend to diminish my respect for his memory, and to exclude, in my judgment, his name from that list of great and wise ministers, where some are willing to place him near the head. If I may seem to my readers less favourable to so eminent a person than common history might warrant, it is at least to be said that I have formed my decision from his own recorded sentiments, or from equally undisputable sources of authority. The publication of his life, that is, of the history of his administration, has not contributed to his honour. We find in it little or nothing of that attachment to the constitution for

[1] See supplement to vol. iii. Clar. St. Papers, for abundant evidence of the close connexion between the courts of France and England. The former offered bribes to lord Clarendon so frequently and unceremoniously, that one is disposed to think he did not show so much indignation at the first overture as he ought to have done. See pp. 1. 4. 13. The aim of Louis was to effect the match with Catherine. Spain would have given a great portion with any protestant princess, in order to break it. Clarendon asked, on his master's account, for 50,000*l*., to avoid application to parliament, p. 4. The French offered a secret loan, or subsidy perhaps, of 2,500,000 livres for the succour of Portugal. This was accepted by Clarendon, p. 15.; but I do not find any thing more about it.

which he had acquired credit, and some things which we must struggle hard to reconcile with his veracity, even if the suppression of truth is not to be reckoned an impeachment of it in an historian.[1] But the manifest profligacy of those who contributed most to his ruin, and the measures which the court took soon afterwards, have rendered his administration comparatively honourable, and attached veneration to his memory. We are unwilling to believe that there was any thing to censure in a minister, whom Buckingham persecuted and against whom Arlington intrigued.[2]

A distinguished characteristic of Clarendon had been his firmness, called indeed by most pride and obstinacy, which no circumstances, no perils, seemed likely to bend. But his spirit sank all at once with his fortune. Clinging too long to office, and cheating himself against all probability with a hope of his master's kindness when he had lost his confidence, he abandoned that dignified philosophy which ennobles a voluntary retirement, that stern courage which innocence ought to inspire; and hearkening to the king's treacherous counsels, fled before his enemies into a foreign country. Though the impeachment, at least in the point of high treason, cannot be defended, it is impossible to deny that the act of banishment, under the circumstances of his flight, was capable in the main of full justification. In an ordinary criminal suit, a process of outlawry goes against the accused who flies from

[1] As no one, who regards with attachment the present system of the English constitution, can look upon lord Clarendon as an excellent minister, or a friend to the soundest principles of civil and religious liberty: so no man whatever can avoid considering his incessant deviations from the great duties of an historian as a moral blemish in his character. He dares very frequently to say what is not true, and what he must have known to be otherwise; he does not dare to say what is true. And it is almost an aggravation of this reproach, that he aimed to deceive posterity, and poisoned at the fountain a stream from which another generation was to drink. No defence has ever been set up for the fidelity of Clarendon's history; nor can men who have sifted the authentic materials entertain much difference of judgment in this respect; though, as a monument of powerful ability and impressive eloquence, it will always be read with that delight which we receive from many great historians, especially the ancient, independent of any confidence in their veracity.

One more instance, before we quit lord Clarendon for ever, may here be mentioned of his disregard for truth. The strange tale of a fruitless search after the restoration for the body of Charles I. is well known. Lords Southampton and Lindsay, he tells us, who had assisted at their master's obsequies in St. George's chapel at Windsor, were so overcome with grief, that they could not recognise the place of interment; and, after several vain attempts, the search was abandoned in despair. Hist. of Reb. vi. 244. Whatever motive the noble historian may have had for this story, it is absolutely incredible that any such ineffectual search was ever made. Nothing could have been more easy than to have taken up the pavement of the choir. But this was unnecessary. Some at least of the workmen employed must have remembered the place of the vault. Nor did it depend on them; for sir Thomas Herbert, who was present, had made at the time a note of the spot, "just opposite the eleventh stall on the king's side." Herbert's Memoirs, 142. And we find from Pepys's Diary, February 26. 1666, that "he was shown at Windsor, where the late king was buried, and king Henry VIII., and my lady Seymour." In which spot, as is well known, the royal body has twice been found, once in the reign of Anne, and again in 1816.

[2] The tenor of Clarendon's life and writings almost forbids any surmise of pecuniary corruption. Yet this is insinuated by Pepys, on the authority of Evelyn, April 27. and May 16. 1667. But the one was gossiping, though shrewd; and the other feeble, though accomplished. Lord Dartmouth, who lived in the next age, and whose excessive ill-nature makes him no good witness against any body, charges him with receiving bribes from the main instruments and promoters of the late troubles, and those who had plundered the royalists, which enabled him to build his great mansion in Piccadilly; asserting that it was full of pictures belonging to families who had been despoiled of them. "And whoever had a mind to see what great families had been plundered during the civil war, might find some remains either at Clarendon house or at Cornbury." Note on Burnet, 88.

The character of Clarendon, as a minister, is fairly and judiciously drawn by Macpherson, Hist. of England, 98.; a work by no means so full of a tory spirit as has been supposed.

justice; and his neglect to appear within a given time is equivalent, in cases of treason or felony, to a conviction of the offence; can it be complained of, that a minister of state, who dares not confront a parliamentary impeachment, should be visited with an analogous penalty? But, whatever injustice and violence may be found in this prosecution, it established for ever the right of impeachment, which the discredit into which the long parliament had fallen exposed to some hazard; the strong abettors of prerogative, such as Clarendon himself, being inclined to dispute this responsibility of the king's advisers to parliament. The commons had, in the preceding session, sent up an impeachment against lord Mordaunt, upon charges of so little public moment, that they may be suspected of having chiefly had in view the assertion of this important privilege. (Parl. Hist. 347.) It was never called in question from this time; and indeed they took care during the remainder of this reign, that it should not again be endangered by a paucity of precedents.[1]

The period between the fall of Clarendon in 1667, and the commencement of lord Danby's administration in 1673, is justly reckoned one of the most disgraceful in the annals of our monarchy. This was the age of what is usually denominated the Cabal administration, from the five initial letters of sir Thomas Clifford, first commissioner of the treasury, afterwards lord Clifford and high treasurer, the earl of Arlington, secretary of state, the duke of Buckingham, lord Ashley, chancellor of the exchequer, afterwards earl of Shaftesbury and lord chancellor, and lastly, the duke of Lauderdale. Though the counsels of these persons soon became extremely pernicious and dishonourable, it must be admitted, that the first measures after the banishment of Clarendon, both in domestic and foreign policy, were highly praiseworthy. Bridgeman, who succeeded the late chancellor in the custody of the great seal, with the assistance of chief

[1] The lords refused to commit the earl of Clarendon on a general impeachment of high treason; and in a conference with the lower house, denied the authority of the precedent in Strafford's case, which was pressed upon them. It is remarkable that the managers of this conference for the commons vindicated the first proceedings of the long parliament, which shows a considerable change in their tone since 1661. They do not however seem to have urged, what is an apparent distinction between the two precedents, that the commitment of Strafford was on a verbal request of Pym in the name of the commons, without alleging any special matter of treason, and consequently irregular and illegal in the highest degree; while the 16th article of Clarendon's impeachment charges him with betraying the king's counsels to his enemies; which, however untrue, evidently amounted to treason within the statute of Edward III.; so that the objections of the lords extended to committing any one for treason upon impeachment, without all the particularity required in an indictment. This showed a very commendable regard to the liberty of the subject; and from this time we do not find the vague and unintelligible accusations, whether of treason or misdemeanour, so usual in former proceedings of parliament. Parl. Hist. 387. A protest was signed by Buckingham, Albemarle, Bristol, Arlington, and others of their party, including three bishops (Cosins, Croft, and another), against the refusal of their house to commit Clarendon upon the general charge. A few, on the other hand, of whom Hollis is the only remarkable name, protested against the bill of banishment.

"The most fatal blow (says James) the king gave himself to his power and prerogative, was when he sought aid from the house of commons to destroy the earl of Clarendon; by that he put that house again in mind of their impeaching privilege, which had been wrested out of their hands by the restoration; and when minister found they were like to be left to the censure of parliament, it made them have a greater attention to court an interest there, than to pursue that of their princes, from whom they hoped not for so sure a support." Life of James, 593.

The king, it is said, came rather slowly into the measure of impeachment; but became afterwards so eager, as to give the attorney-general, Finch, positive orders to be active in it, observing him to be silent. Carte's Ormond, ii. 353. Buckingham had made the king great promises of what the commons would do in case he would sacrifice Clarendon.

baron Hale and bishop Wilkins, and at the instigation of Buckingham, who, careless about every religion, was from humanity or politic motives friendly to the indulgence of all, laid the foundations of a treaty with the nonconformists, on the basis of a comprehension for the presbyterians, and a toleration for the rest.[1] They had nearly come, it is said, to terms of agreement, so that it was thought time to intimate their design in a speech from the throne. But the spirit of 1662 was still too powerful in the commons, and the friends of Clarendon, whose administration this change of counsels seemed to reproach, taking a warm part against all indulgence, a motion that the king be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his protestant subjects, was negatived by 176 to 70.[2] They proceeded, by almost an equal majority, to continue the bill of 1664, for suppressing seditious conventicles; which failed, however, for the present, in consequence of the sudden prorogation. (Parl. Hist. 422.)

But whatever difference of opinion might at that time prevail with respect to this tolerant disposition of the new government, there was none as to their great measure in external policy, the triple alliance with Holland and Sweden. A considerable and pretty sudden change had taken place in the temper of the English people towards France. Though the discordance of national character, and the dislike that seems natural to neighbours, as well as in some measure the recollections of their ancient hostility, had at all times kept up a certain ill will between the two, it is manifest that before the reign of Charles II. there was not that antipathy and inveterate enmity towards the French in general, which it has since been deemed an act of patriotism to profess. The national prejudices, from the accession of Elizabeth to the restoration, ran far more against Spain; and it is not surprising that the apprehensions of that ambitious monarchy, which had been very just in the age of Philip II., should have lasted longer than its ability or inclination to molest us. But the rapid declension of Spain, after the peace of the Pyrenees, and the towering ambition of Louis XIV., master of a kingdom intrinsically so much more formidable than its rival, manifested that the balance of power in Europe, and our own immediate security, demanded a steady opposition to the aggrandisement of one monarchy, and a regard to the preservation of the other. These indeed were rather considerations for statesmen than for the people; but Louis was become unpopular both by his acquisition of Dunkirk at the expense, as it was thought, of our honour, and

[1] Kennet, 293. 300. Burnet. Baxter, 23. The design was to act on the principle of the declaration of 1600, so that presbyterian ordinations should pass sub modo. Tillotson and Stillingfleet were concerned in it. The king was at this time exasperated against the bishops, for their support of Clarendon. Burnet, ibid. Pepys's Diary, 21st December, 1667. And he had also deeper motives.

[2] Parl. Hist. 421. Ralph, 170. Carte's Life of Ormond, ii. 362. Sir Thomas Littleton spoke in favour of the comprehension, as did Seymour and Waller; all of them enemies of Clarendon, and probably connected with the Buckingham faction: but the church party was much too strong for them. Pepys says the commons were furious against the project: it was said that whoever proposed new laws about religion must do it with a rope about his neck. January 10, 1668. This is the first instance of a triumph obtained by the church over the crown in the house of commons. Ralph observes upon it: "It is not for nought that the words church and state are so often coupled together, and that the first has so insolently usurped the precedency of the last."

much more deservedly by his shuffling conduct in the Dutch war, and union in it with our adversaries. Nothing therefore gave greater satisfaction in England than the triple alliance, and consequent peace of Aix la Chapelle, which saved the Spanish Netherlands from absolute conquest, though not without important sacrifices.[1]

Charles himself meanwhile, by no means partook in this common jealousy of France. He had, from the time of his restoration, entered into close relations with that power, which a short period of hostility had interrupted without leaving any resentment in his mind. It is now known, that while his minister was negotiating at the Hague for the triple alliance, he had made overtures for a clandestine treaty with Louis, through his sister the duchess of Orleans, the duke of Buckingham, and the French ambassador Rouvigny.[2] As the king of France was at first backward in meeting these advances, and the letters published in regard to them are very few, we do not find any precise object expressed beyond a close and intimate friendship. But a few words in a memorial of Rouvigny to Louis XIV. seem to let us into the secret of the real purpose. "The duke of York," he says, "wishes much for this union; the duke of Buckingham the same: they use no art, but say that nothing else can re-establish the affairs of this court." (Dalrymple, ii. 12).

Charles II. was not of a temperament to desire arbitrary power, either through haughtiness and conceit of his station, which he did not greatly display, or through the love of taking into his own hands the direction of public affairs, about which he was in general pretty indifferent. He did not wish, as he told lord Essex, to sit like a Turkish sultan, and sentence men to the bowstring, but could not bear that a set of fellows should inquire into his conduct. (Burnet.) His aim, in fact, was liberty rather than power; it was that immunity from control and censure, in which men of his character place a great part of their happiness. For some years he had cared probably very little about enhancing his prerogative, content with the loyalty, though not quite with the liberality, of his parliament. And had he not been drawn against his better judgment into the war with Holland, this harmony might perhaps have been protracted a good deal longer. But the vast expenditure of that war, producing little or no decisive success, and coming unfortunately at a time when trade was not very thriving, and when rents had considerably fallen, exasperated all men against the prodigality of the court, to which they might justly ascribe part of their burthens, and, with the usual miscalculations, believed that much more of them was due. Hence the bill appointing commissioners of public account, so ungrateful to the king, whose personal reputation it was likely to affect, and whose excesses it might tend to restrain.

He was almost equally provoked by the license of his people's

[1] France retained Lille, Tournay, Douay, Charleroi, and other places by the treaty. The allies were surprised, and not pleased at the choice Spain made of yielding these towns in order to save Franche Comté. Temple's Letters, 97. In fact, they were not on good terms with that power; she had even a project, out of spite to Holland of giving up the Netherlands entirely to France, in exchange for Rousillon, but thought better of it on cooler reflection.

[2] Dalrymple, ii. 5. et post. Temple was not treated very favourably by most of the ministers on his return from concluding the triple alliance: Clifford said to a friend, "Well, for all this noise, we must yet have another war with the Dutch before it be long." Temple's Letters, 123.

tongues. A court like that of Charles is the natural topic of the idle, as well as the censorious. An administration so ill-conducted could not escape the remarks of a well-educated and intelligent city. There was one method of putting an end to these impertinent comments, or of rendering them innoxious; but it was the last which he would have adopted. Clarendon informs us that the king one day complaining of the freedom, as to political conversation, taken in coffee-houses, he recommended either that all persons should be forbidden by proclamation to resort to them, or that spies should be placed in them to give information against seditious speakers. (Life of Clarendon, 357.) The king, he says, liked both expedients; but thought it unfair to have recourse to the latter till the former had given fair warning, and directed him to propose it to the council; but here, sir William Coventry objecting, the king was induced to abandon the measure, much to Clarendon's disappointment, though it probably saved him an additional article in his impeachment. The unconstitutional and arbitrary tenor of this great minister's notions of government is strongly displayed in this little anecdote. Coventry was an enlightened, and, for that age, an upright man, whose enmity Clarendon brought on himself by a marked jealousy of his abilities in council.

Those who stood nearest to the king were not backward to imitate his discontent at the privileges of his people and their representatives. The language of courtiers and court-ladies is always intolerable to honest men, especially that of such courtiers as surrounded the throne of Charles II. It is worst of all amidst public calamities, such as pressed very closely on one another in a part of his reign; the awful pestilence of 1665, the still more ruinous fire of 1666, the fleet burned by the Dutch in the Medway next summer. No one could reproach the king for outward inactivity or indifference during the great fire. But there were some, as Clarendon tells us, who presumed to assure him, "that this was the greatest blessing that God had ever conferred on him, his restoration only excepted; for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought it necessary for his service; there being no other way to govern that rude multitude but by force." (Life of Clarendon, 355.) This kind of discourse, he goes on to say, did not please the king. But here we may venture to doubt his testimony; or, if the natural good temper of Charles prevented him from taking pleasure in such atrocious congratulations, we may be sure that he was not sorry to think the city more in his power.

It seems probable that this loose and profligate way of speaking gave rise, in a great degree, to the suspicion that the city had been purposely burned by those who were more enemies to religion and liberty than to the court. The papists stood ready to bear the infamy of every unproved crime; and a committee of the house of commons collected evidence enough for those who were already convinced that London had been burned by that obnoxious sect. Though the house did not proceed farther, there can be no doubt that the inquiry con-

tributed to produce that inveterate distrust of the court, whose connexions with the popish faction were half known, half conjectured, which gave from this time an entirely new complexion to the parliament. Prejudiced as the commons were, they could hardly have imagined the catholics to have burned the city out of mere malevolence; but must have attributed the crime to some far-spreading plan of subverting the established constitution.[1]

The retention of the king's guards had excited some jealousy, though no complaints seem to have been made of it in parliament; but the sudden levy of a considerable force in 1667, however founded upon a very plausible pretext from the circumstances of the war, lending credit to these dark surmises of the court's sinister designs, gave much greater alarm. The commons, summoned together in July, instantly addressed the king to disband his army as soon as the peace should be made. We learn from the duke of York's private memoirs, that some of those who were most respected for their ancient attachment to liberty deemed it in jeopardy at this crisis. The earls of Northumberland and Leicester, lord Hollis, Mr. Pierrepoint, and others of the old parliamentary party, met to take measures together. The first of these told the duke of York that the nation would not be satisfied with the removal of the chancellor, unless the guards were disbanded, and several other grievances redressed. The duke bade him be cautious what he said, lest he should be obliged to inform the king; but Northumberland replied that it was his intention to repeat the same to the king, which he did accordingly the next day.[2]

This change in public sentiment gave warning to Charles that he could not expect to reign with as little trouble as he had hitherto experienced; and doubtless the recollection of his father's history did not contribute to cherish the love he sometimes pretended for parliaments. His brother, more reflecting and more impatient of restraint on royal authority, saw with still greater clearness than the king, that they could only keep the prerogative at its desired height by means of intimidation. A regular army was indispensable; but to keep up an army in spite of parliament, or to raise money for its support without parliament, were very difficult undertakings. It seemed necessary to call in a more powerful arm than their own; and by establishing the closest union with the king of France, to obtain either military or pecuniary succours from him, as circumstances might demand. But there was another and not less imperious motive for a secret treaty. The king, as has been said, though little likely, from the tenor of his life, to feel very strong and lastingly impressions of religion, had at times a desire to testify publicly his adherence to the Romish com-

[1] State Trials, vi. 807. One of the oddest things connected with this fire was, that some persons of the fanatic party had been hanged in April, for a conspiracy to surprise the Tower, murder the duke of Albemarle and others, and then declare for an equal division of lands, &c. In order to effect this, the city was to be fired, and the guards secured in their quarters; and for this the 3rd of Sept. following was fixed upon as a lucky day. This is undoubtedly to be read in the London Gazette for April 30. 1666; and it is equally certain that the city was in flames on the 3rd of Sept. But though the coincidence is curious, it would be very weak to think it more than a coincidence, for the same reason as applies to the suspicion which the catholics incurred that the mere destruction of the city could not have been the object of any party, and that nothing was attempted to manifest any further design.

[2] Macpherson's Extracts, 38. 49. Life of James, 426.

munion. The duke of York had come more gradually to change the faith in which he was educated. He describes it as the result of patient and anxious inquiry; nor would it be possible therefore to fix a precise date for his conversion, which seems to have been not fully accomplished till after the restoration.[1] He however continued in conformity to the church of England; till, on discovering that the catholic religion exacted an outward communion, which he fancied not indispensable, he became more uneasy at the restraint that policy imposed on him. This led to a conversation with the king, of whose private opinions and disposition to declare them, he was probably informed, and to a close union with Clifford and Arlington, from whom he had stood aloof on account of their animosity against Clarendon. The king and duke held a consultation with those two ministers, and with lord Arundel of Wardour, on the 25th of January, 1669, to discuss the ways and methods fit to be taken for the advancement of the catholic religion in these kingdoms. The king spoke earnestly, and with tears in his eyes. After a long deliberation, it was agreed that there was no better way to accomplish this purpose than through France; the house of Austria being in no condition to give any assistance.[2]

The famous secret treaty, which, though believed on pretty good evidence not long after the time, was first actually brought to light by Dalrymple about half a century since, began to be negotiated very soon after this consultation.[3] We find allusions to the king's projects in one of his letters to the duchess Orleans, dated 22nd March, 1669. (Dalrymple, ii. 22.) In another of June 6., the methods he was adopting to secure himself in this perilous juncture appear. He was to fortify Plymouth, Hull, and Portsmouth, and to place them in trusty hands. The fleet was under the duke, as lord admiral; the guards

[1] He tells us himself that it began by his reading a book written by a learned bishop of the church of England to clear her from schism in leaving the Roman communion, which had a contrary effect on him; especially when, at the said bishop's desire, he read an answer to it. This made him inquisitive about the grounds and manner of the Reformation. *After his return*, Heylin's History of the Reformation, and the preface to Hooker's Ecclesiastical Polity, thoroughly convinced him that neither the church of England, nor Calvin, nor any of the reformers, had power to do what they did; and he was confident, he said, that whosoever reads those two books with attention and without prejudice would be of the same opinion. Life of James, i. 629. The duchess of York embraced the same creed as her husband, and, as he tells us, without knowledge of his sentiments, but one year before her death in 1670. She left a paper at her death containing the reasons for her change. See it in Kennet's Register, 320. It is plain that she, as well as the duke, had been influenced by the Romanizing tendency of some Anglican divines.

[2] Macpherson, 50. Life of James, 414.

[3] De Witt was apprised of the intrigue between France and England as early as April, 1669, through a Swedish agent at Paris. Temple, 179. Temple himself, in the course of that year, became convinced that the king's views were not those of his people, and reflects severely on his conduct in a letter, Dec. 24. 1669, p. 206. In Sept. 1672, on his sudden recall from the Hague, De Witt told him his suspicions of a clandestine treaty, 241. He was received on his return coldly by Arlington, and almost with rudeness by Clifford, 244. They knew he would never concur in the new projects. But in 1682, during one of the intervals when Charles was playing false with his brother Louis, the latter, in revenge, let an abbé Primi, in a history of the Dutch war, publish an account of the whole secret treaty, under the name of the count de St. Majolo. This book was immediately suppressed at the instance of the English ambassador; and Primi was sent for a short time to the Bastile. But a pamphlet, published in London just after the Revolution, contains extracts from it. Dalrymple, ii. 80. Somers Tracts, viii. 13. Harl. Misc. ii. 387. Œuvres de Louis XIV. vi. 476. It is singular that Hume should have slighted so well authenticated a fact, even before Dalrymple's publication of the treaty; but I suppose he had never heard of Primi's book.

and their officers were thought in general well affected ;[1] but his great reliance was on the most christian king. He stipulated for 200,000*l.* annually, and for the aid of 6000 French troops.[2] In return for such important succour, Charles undertook to serve his ally's ambition and wounded pride against the United Provinces. These when conquered by the French arms, with the co-operation of an English navy, were already shared by the royal conspirators. A part of Zealand fell to the lot of England, the remainder of the Seven Provinces to France, with an understanding that some compensation should be made to the prince of Orange. In the event of any new rights to the Spanish monarchy accruing to the most christian king, as it is worded (that is, on the death of the king of Spain, a sickly child), it was agreed that England should assist him with all her force by sea and land, but at his own expense; and should obtain not only Ostend and Minorca, but, as far as the king of France could contribute to it, such parts of Spanish America as she should choose to conquer. So strange a scheme of partitioning that vast inheritance was never, I believe, suspected till the publication of the treaty; though Bolingbroke had alluded to a previous treaty of partition between Louis and the emperor Leopold, the complete discovery of which has been but lately made.[3]

Each conspirator in this coalition against the protestant faith and liberties of Europe, had splendid objects in view; but those of Louis seemed by far the more probable and less liable to be defeated. The full completion of their scheme would have re-united a great kingdom to the catholic religion, and turned a powerful neighbour into a dependent pensioner. But should this fail (and Louis was too sagacious not to discern the chances of failure), he had pledged to him the assistance of an ally in subjugating the republic of Holland, which, according to all human calculation, could not withstand their united efforts; nay, even in those ulterior projects which his restless and sanguine ambition had ever in view, and the success of which would have realised, not the chimera of an universal monarchy, but a supremacy and dictatorship over Europe. Charles, on the other hand, besides that he had no other return to make for the necessary protection of France, was impelled by a personal hatred of the Dutch, and by the conscious-

[1] Dalrymple, 23. Life of James, 442.

[2] The tenor of the article leads me to conclude, that these troops were to be landed in England at all events, inorder to secure the public tranquillity, without waiting for any disturbance.

[3] Bolingbroke has a remarkable passage as to this in his Letters on History (Letter VII.): it may be also alluded to by others. The full details, however, as well as more authentic proofs, were reserved, as I believe, for the publication of Œuvres de Louis XIV., where they will be found in vol. ii. 403. The proposal of Louis to the emperor, in 1667, was, that France should have the Pays Bas, Franche Comté, Milan, Naples, the ports of Tuscany, Navarre, and the Philippine Islands; Leopold taking all the rest. The obvious drift of this was, that France should put herself in possession of an enormous increase of power and territory, leaving Leopold to fight as he could for Spain and America, which were not likely to submit peaceably. The Austrian cabinet understood this; and proposed that they should exchange their shares. Finally, however, it was concluded on the king's terms, except that he was to take Sicily instead of Milan. One article of this treaty was, that Louis should keep what he had conquered in Flanders; in other words, the terms of the treaty of Aix la Chapelle. The ratifications were exchanged 29th February 1668. Louis represents himself as more induced by this prospect than by any fear of the triple alliance, of which he speaks slightingly, to conclude the peace of Aix la Chapelle. He thought that he should acquire a character for moderation which might be serviceable to him, "dans les grands accroissemens que ma fortune pourroit recevoir." Vol. ii. p. 369

ness that their commonwealth was the standing reproach of arbitrary power, to join readily in the plan for its subversion. But looking first to his own objects, and perhaps a little distrustful of his ally, he pressed that his profession of the Roman catholic religion should be the first measure in prosecution of the treaty; and that he should immediately receive the stipulated 200,000*l.*, or at least a part of the money. Louis insisted that the declaration of war against Holland should precede. This difference occasioned a considerable delay; and it was chiefly with a view of bringing round her brother on this point, that the duchess of Orleans took her famous journey to Dover, in the spring of 1670. Yet notwithstanding her influence, which passed for irresistible, he persisted in adhering to the right reserved to him in the draft of the treaty of choosing his own time for the declaration of his religion; and it was concluded on this footing at Dover, by Clifford, Arundel, and Arlington, on the 22nd of May, 1670, during the visit of the duchess of Orleans.[1]

A mutual distrust however, retarded the further progress of this scheme; one party unwilling to commit himself till he should receive money, the other too cautious to run the risk of throwing it away. There can be no question but that the king of France was right in urging the conquest of Holland as a preliminary of the more delicate business they were to manage in England; and from Charles's subsequent behaviour, as well as his general fickleness and love of ease, there seems reason to believe that he would glady have receded from an undertaking of which he must every day have more strongly perceived the difficulties. He confessed, in fact, to Louis's ambassador, that he was almost the only man in his kingdom who liked a French alliance. (Dalrymple, 56.) The change of religion, on a nearer view, appeared dangerous for himself, and impracticable as a national measure. He had not dared to intrust any of his protestant ministers, even Buckingham, whose indifference on such points was notorious, with this great secret; and, to keep them the better in the dark, a mock negotiation was set on foot with France, and a pretended treaty actually signed, the exact counterpart of the other, except as to religion. Buckingham, Shaftesbury, and Lauderdale were concerned in this simulated treaty,

[1] Dalrymple, 31-57. James gives a different account of this; and intimates that Henrietta, whose visit to Dover he had for this reason been much against, prevailed on the king to change his resolution, and to begin with the war. He gained over Arlington and Clifford. The duke told them it would quite defeat the catholic design, because the king must run in debt, and be at the mercy of his parliament. They answered that, if the war succeeded, it was not much matter what people suspected. P. 450. This shows that they looked on force as necessary to compass the design, and that the noble resistance of the Dutch, under the prince of Orange, was that which frustrated the whole conspiracy. "The duke," it is again said, p. 453., "was in his own judgment against entering into this war before his majesty's power and authority in England had been better fixed and less precarious, as it would have been, if the private treaty first agreed on had not been altered." The French court, however, was evidently right in thinking that, till the conquest of Holland should be achieved, the declaration of the king's religion would only weaken him at home. It is gratifying to find the heroic character of our glorious deliverer displaying itself among these foul conspiracies. The prince of Orange came over to England in 1670. He was then very young; and his uncle, who was really attached to him, would have gladly associated him in the design; indeed it had been agreed that he was to possess part of the United Provinces in sovereignty. But Colbert writes that the king had found him so zealous a Dutchman and protestant, that he could not trust him with any part of the secret. He let him know, however, as we learn from Burnet, 382., that he had himself embraced the Romish faith.

the negotiation for which did not commence till after the original convention had been signed at Dover.[1]

The court of France having yielded to Charles the point about which he had seemed so anxious, had soon the mortification to discover that he would take no steps to effect it. They now urged that immediate declaration of his religion which they had for very wise reasons not long before dissuaded. The king of England hung back, and tried so many excuses, that they had reason to suspect his sincerity; not that in fact he had played a feigned part from the beginning, but his zeal for popery having given way to the seductions of a voluptuous and indolent life, he had leisure, with the good sense he naturally possessed, to form a better estimate of his resources and of the opposition he must encounter. Meanwhile the eagerness of his ministers had plunged the nation into war with Holland; and Louis, having attained his principal end, ceased to trouble the king on the subject of religion. He received large sums from France during the Dutch war. (Dalrymple's Letters, 84, &c.)

This memorable transaction explains and justifies the strenuous opposition made in parliament to the king and duke of York, and may be reckoned the first act of a drama which ended in the revolution. It is true that the precise terms of this treaty were not authentically known; but there can be be no doubt that those who, from this time, displayed an insuperable jealousy of one brother, and a determined enmity to the other, had proofs enough for moral conviction of their deep conspiracy with France against religion and liberty. This suspicion is implied in all the conduct of that parliamentary opposition, and is the apology of much that seems violence and faction, especially in the business of the popish plot and the bill of exclusion. It is of importance also to observe that James II. was not misled and betrayed by false or foolish counsellors, as some would suggest, in his endeavour to subvert the laws, but acted on a plan, long since concerted, and in which he had taken a principle share.

It must be admitted that neither in the treaty itself nor in the few letters which have been published by Dalrymple, do we find any explicit declaration, either that the catholic religion was to be established as the national church, or arbitrary power introduced in England. But there are not wanting strong presumptions of this design. The king speaks, in a letter to his sister, of finding means to put the proprietors of church lands out of apprehension. (Dalrymple, 23.) He uses the expression, "rétablir la religion catholique;" which though not quite unequivocal, seems to convey more than a bare toleration or a personal profession by the sovereign.[2] He talks of a negotiation with the court of Rome to obtain the permission of having mass in the vulgar tongue and communion in both kinds, as terms that would render his conversion agreeable to his subjects. (P. 62. 84.) He tells the French ambassador, that not only his conscience, but the confusion he saw every day

[1] P. 68. Life of James, 444. In this work it is said that even the duchess of Orleans had no knowledge of the real treaty, and that the other originated with Buckingham. But Dalrymple's authority seems far better in this instance.

[2] P. 52. The reluctance to let the duke of Buckingham into the secret seems to prove that more was meant than a toleration of the Roman catholic religion, towards which he had always been disposed, and which was hardly a secret at court.

increasing in his kingdom, to the diminution of his authority, impelled him to declare himself a catholic; which, besides the spiritual advantage, he believed to be the only means of restoring the monarchy. These passages, as well as the precautions taken in expectation of a vigorous resistance from a part of the nation, appear to intimate a formal re-establishment of the catholic church; a measure connected, in the king's apprehension, if not strictly with arbitrary power, yet with a very material enhancement of his prerogative. For the profession of an obnoxious faith by the king, as an insulated person, would, instead of strengthening his authority, prove the greatest obstacle to it; as, in the next reign, turned out to be the case. Charles, however, and the duke of York deceived themselves into a confidence that the transition could be effected with no extraordinary difficulty. The king knew the prevailing laxity of religious principles in many about his court, and thought he had reason to rely on others as secretly catholic. Sunderland is mentioned as a young man of talent, inclined to adopt that religion. (P. 81.) Even the earl of Orrery is spoken of as a catholic in his heart. (P. 33.) The duke, who conversed more among divines, was led to hope, from the strange language of the high-church party, that they might readily be persuaded to make what seemed no long step, and come into easy terms of union.[1] It was the constant policy of the Romish priests to extenuate the differences between the two churches, and to throw the main odium of the schism on the Calvinistic sects. The Anglicans, in their abhorrence of protestant nonconformists, played into the hands of the common enemy.

The court, however, entertained great hopes from the depressed condition of the dissenters, whom it was intended to bribe with that toleration under a catholic regimen, which they could so little expect from the church of England. Hence the duke of York was always strenuous against schemes of comprehension, which would invigorate the protestant interest and promote conciliation. With the opposite view of rendering a union among protestants impracticable, the rigorous episcopalians were encouraged underhand to prosecute the nonconformists. (Ibid.) The duke of York took pains to assure Owen, an eminent divine of the independent persuasion, that he looked on all persecution as an unchristian thing, and altogether against his conscience. (Macpherson's Extracts, p. 51.) Yet the court promoted a renewal of the temporary act, passed in 1664 against conventicles, which was reinforced by the addition of an extraordinary proviso, "That all clauses in the act should be construed most largely and beneficially for suppressing conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof."[2] Wilkins, the most honest of the bishops, opposed this act in the house of lords, notwithstanding the king's personal request that he would be silent. (Burnet, p. 272.) Sheldon and others, who, like him, disgraced the church of England by their unprincipled policy or their passions,

[1] "The generality of the church of England men was not at that time very averse to the catholic religion; many that went under that name had their religion to choose, and went to church for company's sake." Life of James, p. 442.

[2] 22 Car. II. c. 1. Kennet, p. 306. The zeal in the commons against popery tended to aggravate this persecution of the dissenters. They had been led by some rascally clergymen to believe the absurdity that there was a good understanding between the two parties.

not only gave it their earnest support at the time, but did all in their power to enforce its execution.[1] As the king's temper was naturally tolerant, his co-operation in this severe measure would not easily be understood, without the explanation that a knowledge of his secret policy enables us to give. In no long course of time the persecution was relaxed, the imprisoned ministers set at liberty, some of the leading dissenters received pensions, and the king's declaration of a general indulgence held forth an asylum from the law under the banner of prerogative. (Baxter, 87.) Though this is said to have proceeded from the advice of Shaftesbury, who had no concern in the original secret treaty with France, it was completely in the spirit of that compact, and must have been acceptable to the king.

But the factious, fanatical, republican party (such were the usual epithets of the court at the time, such have ever since been applied by the advocates or apologists of the Stuarts,) had gradually led away by their delusions that parliament of cavaliers; or, in other words, the glaring vices of the king, and the manifestation of designs against religion and liberty, had dispossessed them of a confiding loyalty, which, though highly dangerous from its excess, had always been rather ardent than servile. The sessions had been short, and the intervals of repeated prorogations much longer than usual; a policy not well calculated for that age, where the growing discontents and suspicions of the people acquired strength by the stoppage of the regular channel of complaint. Yet the house of commons, during this period, though unmanageable on the one point of toleration, had displayed no want of confidence in the king nor any animosity towards his administration; notwithstanding the flagrant abuses in the expenditure, which the parliamentary commission of public accounts had brought to light, and the outrageous assault on sir John Coventry; a crime perpetrated by persons employed by the court, and probably by the king's direct order.[2]

The war with Holland at the beginning of 1672, so repugnant to English interests, so unwarranted by any provocation, so infamously piratical in its commencement, so ominous of further schemes still

[1] Baxter, p. 74. 86. Kennet, p. 311. See an infamous letter of Sheldon, written at this time, to the bishops of his province, urging them to persecute the nonconformists. Harris's Life of Charles II., p. 106. Proofs also are given by this author of the manner in which some, such as Lamplugh and Ward, responded to their primate's wishes.

Sheldon found a panegyrist quite worthy of him in his chaplain Parker, afterwards bishop of Oxford. This noteable person has left a Latin history of his own time, wherein he largely commemorates the archbishop's zeal in molesting the dissenters, and praises him for defeating the scheme of comprehension. P. 25. I observe, that the late excellent editor of Burnet has endeavoured to slide in a word for the primate, (note on vol. i. p. 243.), on the authority of that history by bishop Parker, and of Sheldon's Life in the Biographia Britannica. It is lamentable to rest on such proofs. I should certainly not have expected that in Magdalen College, of all places, the name of Parker would have been held in honour; and as to the Biographia, laudatory as it is of primates in general, (save Tillotson, whom it depreciates,) I find on reference, that its praise of Sheldon's virtues is grounded on the authority of his epitaph in Croydon church. It is said in the same note, that Sheldon was born and bred to be archbishop of Canterbury; in which case, Tillotson, Herring, and Sutton must have been intended for something else.

[2] This is asserted by Burnet, and seems to be acknowledged by the duke of York. The court endeavoured to mitigate the effect of the bill brought into the commons in consequence of Coventry's injury; and so far succeeded, that, instead of a partial measure of protection for the members of the house of commons, as originally designed, (which seemed, I suppose, to carry too marked a reference to the particular transaction,) it was turned into a general act, making it a capital felony to wound with intention to maim or disfigure. But the name of the Coventry act has always clung to this statute. Parl. Hist. 461.

more dark and dangerous, finally opened the eyes of all men of integrity. It was accompanied by the shutting up of the exchequer, an avowed bankruptcy at the moment of beginning an expensive war,[1] and by the declaration of indulgence, or suspension of all penal laws in religion; an assertion of prerogative which seemed without limit. These exorbitances were the more scandalous, that they happened during a very long prorogation. Hence the court so lost the confidence of the house of commons, that with all the lavish corruption of the following period, it could never regain a secure majority on any important question. The superiority of what was called the country party is referred to the session of February, 1673, in which they compelled the king to recall his proclamation suspending the penal laws, and raised a barrier against the encroachments of popery in the test act.

The king's declaration of indulgence had been projected by Shaftesbury, in order to conciliate or lull to sleep the protestant dissenters. It redounded in its immediate effect chiefly to their benefit; the catholics already enjoying a connivance at the private exercise of their religion, and the declaration expressly refusing them public places of worship. The plan was most laudable in itself, could we separate the motives which prompted it, and the means by which it was pretended to be made effectual. But in the declaration the king says, "We think ourselves obliged to make use of that supreme power in ecclesiastical matters which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of parliament." "We do," he says, not long afterwards, "declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of nonconformists or recusants, be immediately suspended, and they are hereby suspended." He mentions his intention to license a certain number of places for the religious worship of nonconforming protestants. (Parl. Hist. 515. Kennet, 330.)

It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favour of particular persons, and under certain restrictions. It was undeniable, that the king might, by what is called a "noli prosequi," stop any criminal prosecution commenced in his courts, though not an action for the recovery of a pecuniary penalty, which, by many statutes, was given to the common informer. He might of course set at liberty, by means of a pardon, any person imprisoned, whether upon conviction or by a magistrate's warrant. Thus the operation of penal statutes in religion might, in a great measure, be rendered ineffectual, by an exercise of undisputed prerogatives; and thus, in fact, the catholics had been enabled, since the accession of the house of Stuart, to withstand the crushing severity of the laws. But a pretension, in explicit terms, to suspend a body of statutes, a command to magistrates not to put them

[1] The king promised the bankers interest at six per cent., instead of the money due to them from the exchequer: but this was never paid till the latter part of William's reign. It may be considered as the beginning of our national debt. It seems to have been intended to follow the shutting up of the exchequer with a still more unwarrantable stretch of power, by granting an injunction to the creditors, who were suing the bankers at law. According to North (Examen. p. 38. 47.), lord-keeper Bridgman resigned the great seal rather than comply with this; and Shaftesbury himself, who succeeded him, did not venture, if I understand the passage rightly, to grant an absolute injunction. The promise of interest for their money seems to have been given instead of this more illegal and violent remedy.

in execution, arrogated a sort of absolute power, which no benefits of the indulgence itself, had they even been less insidiously offered could induce a lover of constitutional privileges to endure. Notwithstanding the affected distinction of temporal and ecclesiastical matters, it was evident that the king's supremacy was as much capable of being bounded by the legislature in one as in the other, and that every law in the statute book might be repealed by a similar proclamation. The house of commons voted that the king's prerogative, in matters ecclesiastical, does not extend to repeal acts of parliament; and addressed the king to recall his declaration. Whether from a desire to protect the nonconformists in a toleration even illegally obtained, or from the influence of Buckingham among some of the leaders of opposition, it appears from the debates that many of those, who had been in general most active against the court, resisted this vote, which was carried by 168 to 116. The king, in his answer to this address lamented that the house should question his ecclesiastical power, which had never been done before. This brought on a fresh rebuke; and, in a second address, they positively deny the king's right to suspend any law. "The legislative power," they say, "has always been acknowledged to reside in the king and two houses of parliament." The king, in a speech to the house of lords, complained much of the opposition made by the commons; and found a majority disposed to support him, though both houses concurred in an address against the growth of popery. At length, against the advice of the bolder part of his council, but certainly with a just sense of what he most valued, his ease of mind, Charles gave way to the public voice, and withdrew his declaration.[1]

There was indeed a line of policy indicated at this time, which though intolerable to the bigotry and passion of the house, would best have foiled the schemes of the ministry; a legislative repeal of all the penal statutes both against the catholic and the protestant dissenter, as far as regarded the exercise of their religion. It must be evident to any impartial man that the unrelenting harshness of parliament, from whom no abatement, even in the sanguinary laws against the priests of the Romish church had been obtained, had naturally and almost irresistibly driven the members of that persuasion into the camp of prerogative, and even furnished a pretext for that continual intrigue and conspiracy, which was carried on in the court of Charles II., as it had been in that of his father. A genuine toleration would have put an end to much of this; but in the circumstances of that age, it could not have been safely granted without an exclusion from those public

[1] Parl. Hist. 517. The presbyterian party do not appear to have supported the declaration, at least Birch spoke against it; Waller, Seymour, sir Robert Howard in its favour. Baxter, says, the nonconformists were divided in opinion as to the propriety of availing themselves of the declaration, p. 99. Birch told Pepys, some years before, that he feared some would try for extending the toleration of papists: but the sober party would rather be without it than have it on those terms. Pepys's Diary, Jan. 31. 1668. Parl. Hist. 546. 561. Father Orleans says, that Ormond, Arlington, and some others, advised the king to comply; the duke and the rest of the council urging him to adhere, and Shaftesbury, who had been the first mover of the project, pledging himself for its success; there being a party for the king among the commons, and a force on foot enough to daunt the other side. It was suspected that the women interposed, and prevailed on the king to withdraw his declaration. Upon this, Shaftesbury turned short round, provoked at the king's want of steadiness, and especially at his giving up the point about issuing writs in the recess of parliament.

trusts, which were to be conferred by a sovereign in whom no trust could be reposed.

The act of supremacy, in the first year of Elizabeth, had imposed on all, accepting temporal as well as ecclesiastical offices, an oath denying the spiritual jurisdiction of the pope. But though the refusal of this oath, when tendered, incurred various penalties, yet it does not appear that any were attached to its neglect, or that the oath was a previous qualification for the enjoyment of office, as it was made by a subsequent act of the same reign for sitting in the house of commons. It was found also by experience that persons attached to the Roman doctrine sometimes made use of strained constructions to reconcile the oath of supremacy to their faith. Nor could that test be offered to peers, who were excepted by a special provision. For these several reasons a more effectual security against popish counsellors, at least in notorious power, was created by the famous test act of 1673, which renders the reception of the sacrament according to the rites of the church of England, and a declaration renouncing the doctrine of transubstantiation, preliminary conditions without which no temporal office of trust can be enjoyed. (25 Car. II. c. 2. Burnet, p. 490.) In this fundamental article of faith, no compromise or equivocation would be admitted by any member of the church of Rome. And as the obligation extended to the highest ranks, this reached the end for which it was immediately designed; compelling, not only the lord-treasurer Clifford, the boldest and most dangerous of that party, to retire from public business, but the duke of York himself, whose desertion of the protestant church was hitherto not absolutely undisguised, to quit the post of lord admiral.[1]

It is evident that a test might have been framed to exclude the Roman catholic as effectually as the present, without bearing like this on the protestant nonconformist. But, though the preamble of the bill, and the whole history of the transaction, show that the main object was a safeguard against popery, it is probable that a majority of both houses liked it the better for this secondary effect of shutting out the presbyterians still more than had been done by previous statutes of this reign. There took place however a remarkable coalition between the two parties; and many who had always acted as high-church men and cavaliers, sensible at last of the policy of their common adversaries, renounced a good deal of the intolerance and bigotry that had characterised the present parliament. The dissenters, with much prudence or laudable disinterestedness, gave their support to the test act. In return, a bill was brought in, and, after some debate, passed to the lords, repealing, in a considerable degree, the persecuting laws against their worship.[2] The upper house, perhaps insidiously, returned

[1] The test act began in a resolution, Feb. 28. 1673, that all who refuse to take the oaths and receive the sacrament, according to the rites of the Church of England, shall be incapable of all public employments. Parl. Hist. 556. The court party endeavoured to oppose the declaration against transubstantiation, but of course in vain. Id. 561. 522.

The king had pressed his brother to receive the sacrament, in order to avoid suspicion, which he absolutely refused; and this led, he says, to the test. Life of James, p. 482. But his religion was long pretty well known, though he did not cease to conform till 1672

[2] Parl. Hist. 526–585. These debates are copied from those published by Anchitel Grey, a member of the commons for thirty years; but his notes, though collectively most valuable are sometimes so brief and ill expressed, that it is hardly possible to make out their meaning

it with amendments more favourable to the dissenters, and insisted upon them after a conference.[1] A sudden prorogation very soon put an end to this bill, which was as unacceptable to the court as it was to the zealots of the church of England. It had been intended to follow it up by another, excluding all who should not conform to the established church from serving in the house of commons.[2]

It may appear remarkable that, as if content with these provisions, the victorious country party did not remonstrate against the shutting up of the exchequer, nor even wage any direct war against the king's advisers. They voted, on the contrary, a large supply, which, as they did not choose explictly to recognise the Dutch war, was expressed to be granted for the king's extraordinary occasions. (Kennet, p. 318.) This moderation, which ought at least to rescue them from the charges of faction and violence, has been censured by some as servile and corrupt; and would really incur censure, if they had not attained the great object of breaking the court measures by other means. But the test act, and their steady protestation against the suspending prerogative, crushed the projects and dispersed the members of the cabal. The king had no longer any minister on whom he could rely, and, with his indolent temper, seems from this time, if not to have abandoned all hope of declaring his change of religion, yet to have seen both that and his other favourite projects postponed with much reluctance. From a real predilection, from the prospect of gain, and partly, no doubt, from some distant views of arbitrary power and a catholic establishment, he persevered a long time in clinging secretly to the interests of France: but his active co-operation in the schemes of 1669 was at an end. In the next session of October, 1673, the commons drove Buckingham from the king's councils; they intimidated Arlington into a change of policy; and though they did not succeed in removing the duke of Lauderdale, compelled him to confine himself chiefly to the affairs of Scotland.[3]

CHAPTER XII.

Earl of Danby's Administration—Opposition in the Commons—Frequently corrupt—Character of Lord Danby—Connexion of the popular Party with France—Its Motives on both Sides—Doubt as

The court and church party, or rather some of them, seem to have much opposed this bill for the relief of protestant dissenters.

[1] Com. Journ., 28 and 29 Mar., 1673. Lords' Journ. 24 and 29 Mar. The lords were so slow about this bill, that the lower house, knowing an adjournment to be in contemplation, sent a message to quicken them, according to a practice not unusual in this reign. Perhaps, on an attentive consideration of the report on the conference (Mar. 29.) it may appear that the lords' amendments had a tendency to let in popish, rather than to favour protestant, dissenters. Parker says, that this act of indulgence was defeated by his great hero, archbishop Sheldon, who proposed, that the nonconformists should acknowledge the war against Charles I. to be unlawful. Hist. sui temporis, p. 24. (203. of the translation.)

[2] It was proposed, as an instruction to the committee on the test act, that a clause should be introduced, rendering nonconformists incapable of sitting in the house of commons. This was lost by 163 to 107; but it was resolved, that a distinct bill should be brought in for that purpose. 10 Mar. 1673.

[3] Com. Journ., 20 Jan. 1674. Parl. Hist. 608. 625. 649. Burnet.

to their Acceptance of Money—Secret Treaties of the King with France—Fall of Danby—His Impeachment—Questions arising on it—His Commitment to the Tower—Pardon pleaded in Bar—Votes of Bishops—Abatement of Impeachments by Dissolution—Popish Plot—Coleman's Letters—Godfrey's Death—Injustice of Judges on the Trials—Parliament dissolved—Exclusion of Duke of York proposed—Schemes of Shaftesbury and Monmouth—Unsteadiness of the King—Expedients to avoid the Exclusion—Names of Whig and Tory—New Council formed by Sir William Temple—Long Prorogation of Parliament—Petitions and Addresses—Violence of the Commons—Oxford Parliament—Impeachment of Commoners for Treason constitutional—Fitzharris impeached—Proceedings against Shaftesbury and his Colleagues—Triumph of the Court—Forfeiture of Charter of London—And of other Places—Projects of Lord Russell and Sidney—Their Trials—High Tory Principles of the Clergy—Passive Obedience—Some contend for absolute Power—Filmer—Sir George Mackenzie—Decree of University of Oxford—Connexion with Louis broken off—King's Death.—pp. 562–610.

THE period of lord Danby's administration, from 1673 to 1678, was full of chicanery and dissimulation on the king's side, of increasing suspiciousness on that of the commons. Forced by the voice of parliament, and the bad success of his arms, into peace with Holland, Charles struggled hard against a co-operation with her in the great confederacy of Spain and the empire to resist the encroachments of France on the Netherlands. Such was in that age the strength of the barrier fortresses, and so heroic the resistance of the prince of Orange, that notwithstanding the extreme weakness of Spain, there was no moment in that war, when the sincere and strenuous intervention of England would not have compelled Louis XIV. to accept the terms of the treaty of Aix la Chapelle. It was the treacherous attachment of Charles II. to French interests that brought the long congress of Nimeguen to an unfortunate termination; and by surrendering so many towns of Flanders as laid the rest open to future aggression, gave rise to the tedious struggles of two more wars. (Sir William Temple's Memoirs.)

In the behaviour of the house of commons during this period, previously at least to the session of 1678, there seems nothing which can incur much reprehension from those who reflect on the king's character and intentions; unless it be rather that they granted supplies too largely, and did not sufficiently provide against the perils of the time. But the house of lords contained unfortunately an invincible majority for the court, ready to frustrate any legislative security for public liberty. Thus the habeas corpus act, first sent up to that house in 1674, was lost there in several successive sessions. The commons therefore testified their sense of public grievances, and kept alive an alarm in the nation by resolutions and addresses, which a phlegmatic reader is sometimes too apt to consider as factious or unnecessary. If they seem to have dwelt more, in some of these, on the dangers of religion, and less on those of liberty, than we may think reasonable, it is to be remembered that the fear of popery has always

been the surest string to touch for effect on the people; and that the general clamour against that religion was all covertly directed against the duke of York, the most dangerous enemy of every part of our constitution. The real vice of this parliament was not intemperance, but corruption. Clifford, and still more Danby, were masters in an art practised by ministers from the time of James I., and which indeed can never be unknown where there exists a court and a popular assembly, that of turning to their use the weapons of mercenary eloquence by office, or blunting their edge by bribery.[1] Some who had been once prominent in opposition, as sir Robert Howard and sir Richard Temple, became placemen; some, like Garraway and sir Thomas Lee, while they continued to lead the country party, took money from the court for softening particular votes;[2] many, as seems to have been the case with Reresby, were won by promises, and the pretended friendship of men in power.[3] On two great classes of questions, France and popery, the commons broke away from all management; nor was Danby unwilling to let his master see their indocility on these subjects. But, in general, till the year 1678, by dint of the means before mentioned, and partly no doubt through the honest conviction of many that the king was not likely to employ any minister more favourable to the protestant religion and liberties of Europe, he kept his ground without any insuperable opposition from parliament.[4]

The earl of Danby had virtues as an English minister, which serve to extenuate some great errors and an entire want of scrupulousness in his conduct. Zealous against the church of Rome and the aggrandizement of France, he counteracted, while he seemed to yield to, the

[1] Burnet says, that Danby bribed the less important members, instead of the leaders; which did not answer so well. But he seems to have been liberal to all. The parliament has gained the name of the pensioned. In that of 1679, sir Stephen Fox was called upon to produce an account of the monies paid to many of their predecessors. Those who belonged to the new parliament endeavoured to defend themselves, and give reasons for their pensions; but I observe no one says he did not always vote with the court. Parl. Hist. 1137. North admits that great clamour was excited by this discovery; and well it might. See also Dalrymple's Letters, ii. 92.

[2] Burnet charges these two leaders of opposition with being bribed by the court to draw the house into granting an enormous supply, as the consideration of passing the test act; and see Pepys, Oct. 6. 1666. Sir Rob. Howard and sir Rich. Temple were said to have gone over to the court, in 1670, through similar inducements. Ralph. Roger North (Examen, p. 456.) gives an account of the manner in which men were bought off from the opposition, though it was sometimes advisable to let them nominally continue in it; and mentions Lee, Garraway, and Meres, all very active patriots, if we trust to the parliamentary debates. But, after all, neither Burnet nor Roger North are wholly to be relied on as to particular instances; though the general fact of an extensive corruption be indisputable.

[3] This cunning, self-interested man, who had been introduced to the house by lord Russell and lord Cavendish, and was connected with the country party, tells us that Danby sent for him in Feb. 1677, and assured him that the jealousies of that party were wholly without foundation; that to his certain knowledge, the king meant no other than to preserve the religion and government by law established; that if the government was in any danger, it was from those who pretended such a mighty zeal for it. On finding him well disposed, Danby took his proselyte to the king, who assured him of his regard for the constitution, and was right loyally believed. Reresby's Mem. p. 36. What a picture of a minister and his knave-dupes.

[4] "There were two things," says bishop Parker, "which, like Circe's cup, bewitched men, and turned them into brutes; viz. popery and French interest. If men otherwise sober heard them once, it was sufficient to make them run mad. But when those things were laid aside, their behaviour to his majesty was with a becoming modesty." P. 244. Whenever the court seemed to fall in with the national interests on the two points of France and popery, many of the country party voted with them, though more numerous than their own. Temple, p 458. Reresby, p. 25. et alibi.

prepossessions of his master. If the policy of England before the peace of Nimeguen was mischievous and disgraceful, it would evidently have been far more so, had the king and duke of York been abetted by this minister in their fatal predilection for France. We owe to Danby's influence, it must ever be remembered, the marriage of princess Mary to the prince of Orange, the seed of the revolution and the act of settlement—a courageous and disinterested counsel, which ought not to have proved the source of his greatest misfortunes.[1] But we cannot pretend to say that he was altogether as sound a friend to the constitution of his country, as to her national dignity and interests. I do not mean that he wished to render the king absolute. But a minister harassed and attacked in parliament is tempted to desire the means of crushing his opponents, or at least of augmenting his own sway. The mischievous bill that passed the house of lords in 1675, imposing as a test to be taken by both houses of parliament, as well as all holding beneficed offices, a declaration that resistance to persons commissioned by the king was in all cases unlawful, and that they would never attempt any alteration in the government in church or state, was promoted by Danby, though it might possibly originate with others.[2] It was apparently meant as a bone of contention among the country party, in which the presbyterians and old parliamentarians were associated with discontented cavaliers. Besides the mischief of weakening this party, which indeed the minister could not fairly be expected to feel, nothing could have been devised more unconstitutional, or more advantageous to the court's projects of arbitrary power.

It is certainly possible that a minister who, aware of the dangerous intentions of his sovereign or his colleagues, remains in the cabinet to thwart and countermine them, may serve the public more effectually than by retiring from office; but he will scarcely succeed in avoiding some material sacrifices of integrity, and still less of reputation.

[1] The king, according to James himself, readily consented to the marriage of the princess, when it was first suggested in 1675; the difficulty was with her father. He gave at last a reluctant consent; and the offer was made by lords Arlington and Ossory to the prince of Orange, who received it coolly. Life of James, 501. When he came over to England in Oct. 1677, with the intention of effecting the match, the king and duke wished to defer it till the conclusion of the treaty then in negotiation at Nimeguen; but "the obstinacy of the prince, with the assistance of the treasurer, who from that time entered into the measures and interests of the prince, prevailed upon the flexibility of the king to let the marriage be first agreed and concluded." P. 503.

[2] Kennet, p. 332. North's Examen, p. 61. Burnet. This test was covertly meant against the Romish party, as well as more openly against the dissenters. Life of James, p. 499. Danby set himself up as the patron of the church party and old cavaliers against the two opposing religions; trusting that they were stronger in the house of commons. But the times were so changed that the same men had no longer the same principles, and the house would listen to no measures against nonconformists. He propitiated, however, Chambeth Moloch and his suffragan imps, by renewing the persecution under the existing laws, which had been relaxed by the cabal ministry. Baxter, 156. 172. Kennet, 331. Neal, 698. Somers Tracts, vii. 336.

Meanwhile, schemes of comprehension were sometimes on foot; and the prelates affected to be desirous of bringing about an union; but Morley and Sheldon frustrated them all. Baxter, 156. Kennet, 326. Parker, 25. The bishops, however, were not uniformly intolerant. Croft, bishop of Hereford, published about 1675, a tract that made some noise, entitled the Naked Truth, for the purpose of moderating differences. It is not written with extraordinary ability; but is very candid and well designed, though conceding so much as to scandalize his brethren. Somers Tracts, vii. 268. Biog. Brit. art. Croft; where the book is extravagantly overpraised. Croft was one of the few bishops, who, being then very old, advised his clergy to read James II.'s declaration of indulgence in 1687; thinking, I suppose, though in those circumstances erroneously, that toleration was so good a thing, it was better to have it irregularly than not at all.

Danby, the ostensible adviser of Charles II., took on himself the just odium of that hollow and suspicious policy which appeared to the world. We know indeed that he was concerned, against his own judgment, in the king's secret receipt of money from France, the price of neutrality, both in 1676 and in 1678, the latter to his own ruin. Could the opposition, though not so well apprized of these transactions as we are, be censured for giving little credit to his assurances of zeal against that power, which, though sincere in him, were so little in unison with the disposition of the court? Had they no cause to dread that the great army suddenly raised in 1677, on pretence of being employed against France, might be turned to some worse purposes more congenial to the king's temper?[2]

This invincible distrust of the court is the best apology for that which has given rise to so much censure, the secret connexions formed by the leaders of opposition with Louis XIV., through his ambassadors Barillon and Rouvigny, about the spring of 1678.[3] They well knew that the king's designs against their liberties had been planned in concert with France, and could hardly be rendered effectual without her aid in money, if not in arms.[4] If they could draw over this dangerous ally from his side, and convince the king of France that it was not his interest to crush their power, they would at least

[1] Charles received 500,000 crowns for the long prorogation of parliament, from Nov. 1675 to Feb. 1677. In the beginning of the year 1676, the two kings bound themselves by a formal treaty (to which Danby and Lauderdale, but not Coventry or Williamson, were privy,) not to enter on any treaties but by mutual consent; and Charles promised, in consideration of a pension, to prorogue or dissolve parliament, if they should attempt to force such treaties upon him. Dalrymple, p. 99. Danby tried to break this off, but did not hesitate to press the French cabinet for the money; and 200,000*l.* was paid. The prince of Orange came afterwards through Rouvigny to a knowledge of this secret treaty P. 117.

[2] This army consisted of between twenty and thirty thousand men, as fine troops as could be seen (Life of James, p. 512.): an alarming sight to those who denied the lawfulness of any standing army. It is impossible to doubt, from Barillon's correspondence in Dalrymple, that the king and duke looked to this force as the means of consolidating the royal authority. This was suspected at home, and very justly: "Many well-meaning men, says Reresby, "began to fear the army now raised was rather intended to awe our own kingdom than to war against France, as had at first been suggested." P. 62. And in a former passage, p. 57., he positively attributes the opposition to the French war, in 1678, to "a jealousy that the king indeed intended to raise an army, but never designed to go on with the war; and to say the truth, some of the king's own party were not very sure of the contrary."

[3] Dalrymple, p. 129. The immediate cause of those intrigues was the indignation of Louis at the princess Mary's marriage. That event, which, as we know from James himself, was very suddenly brought about, took the king of France by surprise. Charles apologised for it to Barillon, by saying, "I am the only one of my party, except my brother" (P. 125.) This, in fact, was the secret of his apparent relinquishment of French interests at different times in the latter years of his reign; he found it hard to kick constantly against the pricks, and could employ no minister who went cordially along with his predilections. He seems too at times, as well as the duke of York, to have been seriously provoked at the unceasing encroachments of France, which exposed him to so much vexation at Rome.

The connexion with lords Russell and Hollis began in Mar. 1678, though some of the opposition had been making advances to Barillon in the preceding Nov. p. 129. 131. See also "Copies and Extracts of some Letters written to and from the earl of Danby," published in 1716; whence it appears that Montagu suspected the intrigues of Barillon, and the mission of Rouvigny, lady Russell's first cousin, for the same purpose, as early as Jan. 1678; and informed Danby of it, pp. 50. 53. 59.

[4] Courtin, the French ambassador who preceded Barillon, had been engaged through great part of the year 1677 in a treaty with Charles for the prorogation or dissolution of parliament. After a long chaffering, the sum was fixed at 2,000,000 livres; in consideration of which the king of England pledged himself to prorogue parliament from Dec. to April, 1678. It was in consequence of the subsidy being stopped by Louis, in resentment of the princess Mary's marriage, that parliament, which had been already prorogued till April, was suddenly assembled in Feb. Dalrymple, p. 111. It appears that Courtin had employed French money to bribe members of the commons in 1677, with the knowledge of Charles; assigning as a

frustrate the suspected conspiracy, and secure the disbanding of the army; though at a great sacrifice of the continental policy which they had long maintained, and which was truly important to our honour and safety. Yet there must be degrees in the scale of public utility; and if the liberties of the people were really endangered by domestic treachery, it was ridiculous to think of saving Tournay and Valenciennes at the expense of all that was dearest at home. This is plainly the secret of that unaccountable, as it then seemed, and factious opposition, in the year 1678; which cannot be deemed to have served the ends of France, and thwarted the endeavours of lord Danby and sir William Temple to urge on the uncertain and half-reluctant temper of the king into a decided course of policy.[1] Louis, in fact, had no desire to see the king of England absolute over his people, unless it could be done so much by his own help as to render himself the real master of both. In the estimate of kings, or of such kings as Louis XIV., all limitations of sovereignty, all co-ordinate authority of estates and parliaments, are not only derogatory to the royal dignity, but injurious to the state itself, of which they distract the council and enervate the force. Great armies, prompt obedience, unlimited power over the national resources, secrecy in council, rapidity in execution, belong to an energetic and enlightened despotism: we should greatly err in supposing that Louis XIV. was led to concur in projects of subverting our constitution from any jealousy of its contributing to our prosperity. He saw, on the contrary, in the perpetual jarring of the kings and parliament, a source of feebleness and vacillation in foreign affairs, and a field for intrigue and corruption. It was certainly far from his design to see a republic, either in name or effect, established in England; but an unanimous loyalty, a spontaneous submission to the court, was as little consonant to his interests; and especially if accompanied with a willing return of the majority to the catholic religion, would have put an end to his influence over the king, and still more certainly over the duke of York.[2]

reason, that Spain and the emperor were distributing money on the other side. In the course of this negotiation, he assured Charles that the king of France was always ready to employ all his forces for the confirmation and augmentation of the royal authority in England, so that he should always be master of his subjects, and not depend upon them.

[1] See what Temple says of this, p. 460.: the king raised 20,000 men in the spring of 1678. and seemed ready to go into the war; but all was spoiled by a vote, on Clarges's motion, that no money should be granted till satisfaction should be made as to religion. This irritated the king so much that he determined to take the money which France offered him; and he afterwards almost compelled the Dutch to sign the treaty; so much against the prince of Orange's inclinations, that he has often been charged, though unjustly, with having fought the battle of St. Denis after he knew that the peace was concluded. Danby also, in his vindication (published in 1679, and again in 1710: see State Trials, ii. 634.), lays the blame of discouraging the king from embarking in the war on this vote of the commons. And the author of the Life of James II. says very truly, that the house "were in reality more jealous of the king's power than of the power of France; for notwithstanding all their former warm addresses for hindering the growth of the power of France, when the king had no army, now that he had one, they passed a vote to have it immediately disbanded; and the factious party, which was then prevalent among them, made it their only business to be rid of the duke, to pull down the ministers, and to weaken the crown." P. 512.

In defence of the commons it is to be urged, that, if they had any strong suspicion of the king's private intrigues with France for some years past, as in all likelihood they had, common prudence would teach them to distrust his pretended desire for war with her; and it is, in fact, most probable, that his real object was to be master of a considerable army.

[2] The memorial of Blanchard to the prince of Orange, quoted by Dalrymple, p. 201., contains these words: "Le roi auroit été bien faché qu'il eut été absolu dans ses états; l'un de ses plus constants maximes depuis son rétablissement ayant été, de le diviser d'avec son parlement, et de se servir tantôt de l'un, tantôt de l'autre, toujours par argent pour parvenir á ses fins."

He had long been sensible of the advantage to be reaped from a malcontent party in England. In the first years after the restoration, he kept up a connexion with the disappointed commonwealth's men, while their courage was yet fresh and unsubdued; and in the war of 1665 was very nearly exciting insurrections both in England and Ireland.[1] Those schemes of course were suspended as he grew into closer friendship with Charles, and saw a surer method of preserving an ascendancy over the kingdom. But as soon as the princess Mary's marriage, contrary to the king of England's promise, and to the plain intent of all their clandestine negotiations, displayed his faithless and uncertain character to the French cabinet, they determined to make the patriotism, the passion, and the corruption of the house of commons, minister to their resentment and ambition.

The views of lord Hollis and lord Russell in this clandestine intercourse with the French ambassador were sincerely patriotic and honourable: to detach France from the king; to crush the duke of York and popish faction; to procure the disbanding of the army, the dissolution of a corrupted parliament, the dismissal of a bad minister.[2] They would indeed have displayed more prudence in leaving these dark and dangerous paths of intrigue to the court which was practised in them. They were concerting measures with the natural enemy of their country, religion, honour, and liberty; whose obvious policy was to keep the kingdom disunited, that it might be powerless; who had been long abetting the worst designs of our own court, and who could never be expected to act against popery and despotism, but for the temporary ends of his ambition. Yet, in the very critical circumstances of that period, it was impossible to pursue any course with security; and the dangers of excessive circumspection and adherence to general rules may often be as formidable as those of temerity. The connexion of the popular party with France may very probably have frustrated the sinister intentions of the king and duke, by compelling the reduction of the army, though at the price of a great sacrifice of European policy. Such may be, with unprejudiced men, a sufficient apology for the conduct of lord Russell and lord Hollis, the most public-spirited and high-minded characters of their age, in this extraordinary and unnatural

[1] Ralph, p. 116. Œuvres de Louis XIV. ii. 204. and v. 67., where we have a curious and characteristic letter of the king to d'Estrades in Jan. 1662, when he had been provoked by some high language Clarendon had held about the right of the flag.

[2] The letters of Barillon in Dalrymple, pp. 134. 136. 140., are sufficient proofs of this. He imputes to Danby in one place, p. 142., the design of making the king absolute, and says: "M. le duc d'York se croit perdu pour sa religion, si l'occasion presente ne lui sert à soumettre l'Angleterre; c'est une enterprise fort hardie, et dont le succés est fort douteux." Of Charles himself he says; "Le roi d'Angleterre balance encore à se porter à l'extremité; son humeur répugne fort au dessein de changer le gouvernement. Il est neanmoins entrainé par M. le duc d'York et par le grand trésorier; mais dans le fond il aimeroit mieux que la paix le mit en état de demeurer en repos, et rétablir ses affaires, c'est à dire, un bon revenu; et je crois qu'il ne se soucie pas beaucoup d'être plus absolu qu'il est. Le duc et le trésorier connoissent bien à qui ils ont affaire, et craignent d'être abandonnés par le roi d'Angleterre aux premiers obstacles considérables qu'ils trouveront au dessein de relever l'autorité royale en Angleterre." On this passage it may be observed, that there is reason to believe there was no co-operation, but rather a great national distrust at this time, between the duke of York and lord Danby. But Barillon had no doubt taken care to infuse into the minds of the opposition those suspicions of that minister's designs.

[3] Barillon seems to have favoured the opposition rather than the duke of York, who urged the keeping up of the army. This was also the great object of the king, who very reluctantly disbanded it in Jan. 1679. Dalrymple, 207. &c.

alliance. It would have been unworthy of their virtue to have gone into so desperate an intrigue with no better aim than that of ruining lord Danby; and of this I think we may fully acquit them. The nobleness of Russell's disposition beams forth in all that Barillon has written of their conferences. Yet, notwithstanding the plausible grounds of his conduct, we can hardly avoid wishing that he had abstained from so dangerous an intercourse, which led him to impair, in the eyes of posterity, by something more like faction than can be ascribed to any other part of his parliamentary life, the consistency and ingenuousness of his character.[1]

I have purposely mentioned lord Russell and lord Hollis apart from others who were mingled in the same intrigues of the French ambassador, both because they were among the first with whom he tampered, and because they are honourably distinguished by their abstinence from all pecuniary remuneration, which Hollis refused, and which Barillon did not presume to offer to Russell. It appears however from this minister's accounts of the money he had expended in this secret service of the French crown, that, at a later time, namely about the end of 1680, many of the leading members of opposition, sir Thomas Littleton, Mr. Garraway, Mr. Hampden, Mr. Powle, Mr. Sacheverell, Mr. Foley, received sums of 500 or 300 guineas, as testimonies of the king of France's munificence and favour. Among others, Algernon Sidney, who, though not in parliament, was very active out of it, is more than once mentioned. Chiefly because the name of Algernon Sidney had been associated with the most stern and elevated virtue, this statement was received with great reluctance; and many have ventured to call the truth of these pecuniary gratifications in question. This is certainly a bold surmise; though Barillon is known to have been a man of luxurious and expensive habits, and his demands for more money on account of the English court, which continually occur in his correspondence with Louis, may lead to a suspicion that he would be in some measure a gainer by it. This however might possibly be the case without actual peculation. But it must be observed that there are two classes of those who are alleged to have received presents through his hands; one, of such as were in actual communication with himself; another, of such as sir John Baber, a secret agent, had prevailed upon to accept it. Sidney was in the first class; but, as to the second, comprehending Littleton, Hampden, Sacheverell, in whom it is as difficult to suspect pecuniary corruption as in him, the proof is manifestly weaker, depending only on the assertion of an intriguer that he had paid them the money. The falsehood either of Baber or Barillon would acquit these considerable men. Nor is it to be reckoned improbable that persons employed in this clandestine service should be guilty of a fraud, for which they could evidently never be made responsible. We have indeed a remarkable confession of Coleman, the famous intriguer executed for the popish plot, to this effect. He deposed in his examination before the house of commons, in Nov., 1678, that he had received last session of Barillon 2500*l.* to be distributed among members of parliament, which he had converted to

[1] This delicate subject is treated with great candour as well as judgment by lord John Russell in his Life of William Lord Russell.

his own use. (Parl. Hist. 1035.; Dalrymple, 200.) It is doubtless possible that Coleman, having actually expended this money in the manner intended, bespoke the favour of those whose secret he kept by taking the discredit of such a fraud on himself. But it is also possible that he spoke the truth. A similar uncertainty hangs over the transactions of sir John Baber. Nothing in the parliamentary conduct of the above-mentioned gentlemen in 1680 corroborates the suspicion of an intrigue with France, whatever may have been the case in 1678.

I must fairly confess, however, that the decided bias of my own mind is on the affirmative side of this question; and that principally because I am not so much struck, as some have been, by any violent improbability in what Barillon wrote to his court on the subject. If indeed we were to read, that Algernon Sidney had been bought over by Louis XIV. or Charles II. to assist in setting up absolute monarchy in England, we might fairly oppose our knowledge of his inflexible and haughty character, of his zeal, in life and death, for republican liberty. But there is, I presume, some moral distinction between the acceptance of a bribe to desert or betray our principles and that of a trifling present for acting in conformity to them. The one is, of course, to be styled corruption; the other is repugnant to a generous and delicate mind, but too much sanctioned by the practice of an age far less scrupulous than our own, to have carried with it any great self-reproach or sense of degradation. It is truly inconceivable that men of such property as sir Thomas Littleton or Mr. Foley should have accepted 300 or 500 guineas, the sums mentioned by Barillon, as the price of apostasy from those political principles to which they owed the esteem of their country, or of an implicit compliance with the dictates of France. It is sufficiently disgraceful to the times in which they lived, that they should have accepted so pitiful a gratuity; unless, indeed, we should in candour resort to an hypothesis which seems tenable, that they agreed among themselves not to run the chance of offending Louis, or exciting his distrust, by a refusal of this money. Sidney indeed was, as there is reason to think, a distressed man; he had formerly been in connection with the court of France,[1] and had persuaded himself that the countenance of that power might one day or other be afforded to his darling scheme of a commonwealth; he had contracted a dislike to the prince of Orange, and consequently to the Dutch alliance, from the same governing motive: is it strange that one so circumstanced should have accepted a small gratification from the king of France which implied no dereliction of his duty as an Englishman, or any sacrifice of political integrity? And I should be glad to be informed by the idolaters of Algernon Sidney's name, what we know of him from authentic and contemporary sources which renders this incredible.[2]

[1] Louis XIV. tells us, that Sidney had made proposals to France in 1666 for an insurrection, and asked 100,000 crowns to effect it; which was thought too much for an experiment. He tried to persuade the ministers, that it was against the interest of France that England should continue a monarchy. Œuvres de Louis XIV. ii. 204.

[2] "No man of common sense, I imagine," says lord John Russell, "can believe that he took the money for himself. His character is one of heroic pride and generosity. His declining to sit in judgment on the king, his extolling the sentence when Charles II., was restored, his shooting a horse for which Louis XIV. offered him a large sum, that he might not submit to the will of a despot, are all traits of a spirit as noble as it is uncommon. With a soul above

France, in the whole course of these intrigues, held the game in her hands. Mistress of both parties, she might either embarrass the king through parliament, if he pretended to an independent course of policy, or cast away the latter, when he should return to his former engagements. Hence, as early as May, 1678, a private treaty was set on foot between Charles and Louis, by which the former obliged himself to keep a neutrality, if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband most of his army, and not to assemble his parliament for six months; in return he was to receive 6,000,000 livres. This was signed by the king himself on May 27.; none of his ministers venturing to affix their names. (Dalrymple, 162.) Yet at this time he was making outward professions of an intention to carry on the war. Even in this secret treaty, so thorough was his insincerity, he meant to evade one of its articles, that of disbanding his troops. In this alone he was really opposed to the wishes of France; and her pertinacity in disarming him seems to have been the chief source of those capricious changes of his disposition which we find for three or four years at this period.[1] Louis again appears not only to have mistrusted the king's own inclinations after the prince of Orange's marriage, and his ability to withstand the eagerness of the nation for war, but to have apprehended he might become absolute by means of his army, without standing indebted for it to his ancient ally. In this point therefore he faithfully served the popular party. Charles used every endeavour to evade this condition; whether it were that he still entertained hopes of attaining arbitrary power through intimidation, or that dreading the violence of the house of commons, and ascribing it rather to a republican conspiracy than to his own misconduct, he looked to a military force as his security. From this motive we may account for his strange proposal to the French king of a league in support of Sweden, by which he was to furnish fifteen ships and 10,000 men, at the expense of France, during three years, receiving six millions for the first year, and

meanness, a station above poverty, and a temper of philosophy above covetousness, what man will be envious enough to think that he was a pensioner of France?" p. 116.

I must fairly confess, that in my opinion all those who believe that Sidney took the money at all, believe that he took it for himself; and notwithstanding this high eulogium, I adhere to the reasoning in my text. This noble descendant of lord Russell, equal to him in candour and virtue, but far superior in talents, has lost sight, I must take leave to say, of his usual good sense and good taste in mentioning with praise the idle story of Sidney shooting his horse. It was such an action as Alderman Sawbridge or Mr. Thomas Brand Hollis would have thought very fine; but which, on a moment's thought, lord John Russell would see in its true light, as a piece of vulgar brutality, unworthy of Sidney's character and station, and most unlikely to be true. He was a republican, no doubt, and wished to see such a form of government established at home; but it was as a Roman senator, with no bigotted abhorrence of kings, or cosmopolize zeal. Nor was Louis XIV., as lord John well knows, a Muley Molock, who would have taken away a gentleman's horse by violence. The truth is, that Sidney was a little too much disposed towards that great monarch; and would, I have no question, have been most happy to oblige his majesty and pocket the pistoles. But it has been the fashion for a long time (chiefly, I am persuaded, through the delusion of the ear, the name of Algernon Sidney having so spacious a sound) to exaggerate his merits, so that even those who are best able to form an estimate of them are carried away; and I have no doubt that such as know very little will be dissatisfied with what I have said of their idol.

[1] His exclamation at Barillon's pressing the reduction of the army to 8000 men is well known; "Od's fish! are all the king of France's promises to make me master of my subjects come to this! or does he think that a matter to be done with 8000 men!" Temple says, "He seemed at this time (May, 1678) more resolved to enter into the war than I had ever before seen or thought him."

four for each of the two next. Louis, as is highly probable, betrayed this project to the Dutch government, and thus frightened them into that hasty signature of the treaty of Nimeguen, which broke up the confederacy and accomplished the immediate objects of his ambition. No longer in need of the court of England, he determined to punish it for that duplicity, which none resent more in others than those who are accustomed to practise it. He refused Charles the pension stipulated by the private treaty, alleging that its conditions had not been performed; and urged on Montagu, with promises of indemnification, to betray as much as he knew of that secret, in order to ruin lord Danby. (Dalrymple, 178. et post.)

The ultimate cause of this minister's fall may thus be deduced from the best action of his life; though it ensued immediately from his very culpable weakness in aiding the king's base inclinations towards a sordid bargaining with France. It is well known that the famous letter to Montagu, empowering him to make an offer of neutrality for the price of 6,000,000 livres, was not only written by the king's express order, but that Charles even attested this with his own signature in a postscript.

This bears date five days after an act had absolutely passed to raise money for carrying on the war; a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozener as filled the throne. But, as he was beyond their reach, they exercised a constitutional right in the impeachment of his responsible minister. For responsible he surely was; though, strangely mistaking the obligations of an English statesman, Danby seems to fancy in his printed defence that the king's order would be sufficient warrant to justify obedience in any case not literally unlawful. "I believe," he says, "there are very few subjects but what would take it ill not to be obeyed by their servants; and their servants might as justly expect their master's protection for their obedience." The letter to Montagu, he asserts, "was written by the king's command, upon the subject of peace and war, wherein his majesty alone is at all times sole judge, and ought to be obeyed not only by any of his ministers of state, but by all his subjects."[1] Such were, in that age, the monarchical or tory maxims of government, which the impeachment of this minister contributed in some measure to overthrow. As the king's authority for the letter to Montagu was an undeniable fact, evidenced by his own hand-writing, the commons in impeaching lord Danby went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is answerable for the justice, the honesty, the utility of all measures emanating from the crown, as well as for their legality; and thus the executive administration is, or ought to be, subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of parliament. It must at the same time be admitted that, through the heat of honest indignation

[1] Memoirs relating to the Impeachment of the Earl of Danby, 1710, pp. 151. 227. State Trials, vol. xi.

and some less worthy passions on the one hand, through uncertain and crude principles of constitutional law on the other, this just and necessary impeachment of the earl of Danby was not so conducted as to be exempt from all reproach. The charge of high treason for an offence manifestly amounting only to misdemeanour, with the purpose, not perhaps of taking the life of the accused, but at least of procuring some punishment beyond the law,[1] the strange mixture of articles, as to which there was no presumptive proof, or which were evidently false, such as concealment of the popish plot, gave such a character of intemperance and faction to these proceedings, as may lead superficial readers to condemn them altogether.[2] The compliance of Danby with the king's corrupt policy had been highly culpable, but it was not unprecedented; it was even conformable to the court standard of duty; and as it sprung from too inordinate a desire to retain power, it would have found an appropriate and adequate chastisement in exclusion from office. We judge perhaps somewhat more favourably of lord Danby than his contemporaries at that juncture were warranted to do; but even then he was rather a minister to be pulled down than a man to be severely punished. His one great and undeniable service to the protestant and English interests should have palliated a multitude of errors. Yet this was the main-spring and first source of the intrigue that ruined him.

The impeachment of lord Danby brought forward several material discussions on that part of our constitutional law, which should not be passed over in this place. 1. As soon as the charges presented by the commons at the bar of the upper house had been read, a motion was made that the earl should withdraw; and another afterwards, that he should be committed to the Tower: both of which were negatived by considerable majorities.[3] This refusal to commit on a charge of treason had created a dispute between the two houses in the instance of lord Clarendon.[4] In that case, however, one of the articles of impeachment did actually contain an unquestionable treason. But it was contended with much more force on the present occasion, that if the commons, by merely using the word traitorously, could alter the character of offences which, on their own showing, amounted to misdemeanours, the boasted certainty of the law in matters of treason would be at an end; and unless it were meant that the lords should pass sentence in such a case against the received rules of law, there could be no pretext for their refusing to admit the accused to bail. Even in Strafford's case, which was a condemned precedent, they had a general charge of high treason upon which he was committed; while the offences alleged against Danby were stated with particularity, and upon the face of the articles could not be brought within any reasonable interpretation of the statutes relating to treason. The house of commons faintly urged a remarkable

[1] The violence of the next house of commons, who refused to acquiesce in Danby's banishment, to which the lords had changed their bill in attainder, may seem to render this very doubtful. But it is to be remembered, that they were exasperated by the pardon he had clandestinely obtained, and pleaded in bar of their impeachment.

[2] The impeachment was carried by 179 to 116, 19 Dec. A motion, 21 Dec. to leave out the word traitorously, was lost by 179 to 141.

[3] Lords' Journs., 26 Dec. 1678. Eighteen peers entered their protests; Halifax, Essex, Shaftesbury, &c.

[4] State Trials, vi. 351 et post. Hatsell's Precedents, iv. 176.

clause in the act of Edward III., which provides that, in case of any doubt arising as to the nature of an offence charged to amount to treason, the judges should refer it to the sentence of parliament; and maintained that this invested the two houses with a declaratory power to extend the penalties of the law to new offences which had not been clearly provided for in its enactments. But, though something like this might possibly have been in contemplation with the framers of that statute, and precedents were not absolutely wanting to support the construction, it was so repugnant to the more equitable principles of criminal law which had begun to gain ground, that even the heat of faction did not induce the commons to insist upon it. They may be considered however as having carried their point; for, though the prorogation and subsequent dissolution of the present parliament ensued so quickly that nothing more was done in the matter, yet when the next house of commons revived the impeachment, the lords voted to take Danby into custody without any further objection. (Lords' Journ. April 16.) It ought not to be inferred from hence, that they were wrong in refusing to commit; nor do I conceive, notwithstanding the later precedent of lord Oxford, that any rule to the contrary is established. In any future case it ought to be open to debate, whether articles of impeachment pretending to contain a charge of high treason do substantially set forth overt acts of such a crime; and, if the house of lords shall be of opinion, either by consulting the judges or otherwise, that no treason is specially alleged, they should, notwithstanding any technical words, treat the offence as a misdemeanour, and admit the accused to bail.[1]

2. A still more important question sprang up as to the king's right of pardon upon a parliamentary impeachment. Danby, who had absconded on the unexpected revival of these proceedings in the new parliament, finding that an act of attainder was likely to pass against him in consequence of his flight from justice, surrendered himself to the usher of the black rod; and, on being required to give in his written answer to the charges of the commons, pleaded a pardon, secretly obtained from the king, in bar of the prosecution.[2] The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England. They demanded judgment at the lords' bar, against Danby, as having put in a void plea. They resolved, with that culpable violence which distin-

[1] "The lord privy seal, Anglesea, in a conference between the two houses," said, "that, in the transaction of this affair, were two great points gained by this house of commons: the first was, that impeachments made by the commons in one parliament continued from session to session, and parliament to parliament, notwithstanding prorogations or dissolutions: the other point was, that in cases of impeachments, upon special matter shown, if the modesty of the party directs him not to withdraw, the lords admit that of right they ought to order him to withdraw, and that afterwards he ought to be committed. But he understood that the lords did not intend to extend the points of withdrawing and committing to general impeachments without special matter alleged; else they did not know how many might be picked out of their house on a sudden."

Shaftesbury said, indecently enough, that they were as willing to be rid of the earl of Danby as the commons; and cavilled at the distinction between general and special impeachments. Com. Journs. 12 April, 1679. On the impeachment of Scroggs for treason, in the next parliament, it was moved to commit him; but the previous question was carried, and he was admitted to bail; doubtless because no sufficient matter was alleged. Twenty peers protested. Lords' Journs. 7 Jan, 1681.

[2] Lords' Journs. 25 April Parl. Hist. 112[1] &c.

guished this and the succeeding house of commons, in order to deprive the accused of the assistance of counsel, that no commoner whatsoever should presume to maintain the validity of the pardon pleaded by the earl of Danby without their consent, on pain of being accounted a betrayer of the liberties of the commons of England. (Lords' Journ. 9th May, 1679.) They denied the right of the bishops to vote on the validity of this pardon. They demanded the appointment of a committee from both houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot. The upper house gave some signs of a vacillating and temporizing spirit, not by any means unaccountable. They acceded, after a first refusal, to the proposition of a committee, though manifestly designed to encroach on their own exclusive claim of judicature.[1] But they came to a resolution that the spiritual lords had a right to sit and vote in parliament in capital cases, until judgment of death shall be pronounced.[2] The commons of course protested against this vote;[3] but a prorogation soon dropped the curtain over their differences; and Danby's impeachment was not acted upon in the next parliament.

There seems to be no kind of pretence for objecting to the votes of the bishops on such preliminary questions as may arise in an impeachment of treason. It is true that ancient custom has so far ingrafted the provisions of the ecclesiastical law on our constitution, that they are bound to withdraw when judgment of life or death is pronounced; though even in this they always do it with a protestation of their right to remain. This, once claimed as a privilege of the church, and reluctantly admitted by the state, became, in the lapse of ages, an exclusion and badge of inferiority. In the constitutions of Clarendon, under Henry II., it is enacted, that the bishops and others holding spiritual benefices "in capite" should give their attendance at trials in parliament, till it come to sentence of life or member. This, although perhaps too ancient to have authority as statute law, was a sufficient evidence of the constitutional usage, where nothing so material could be alleged on the other side. And, as the original privilege was built upon nothing better than the narrow superstitions of the canon law, there was no reasonable pretext for carrying the exclusion of the spiritual lords farther than certain and constant precedents required. Though it was true, as the enemies of lord Danby urged, that by voting for the validity of his pardon, they would in effect determine the whole question in his favour, yet there seemed no serious reasons, considering it abstractedly from party views, why they should not thus indirectly be restored for once to a privilege, from which the prejudices of former ages alone had shut them out.

[1] Lords' Journs. 10 May, and 11. After the former vote 50 peers, out of 107 who appear to have been present, entered their dissent; and another, the earl of Leicester, is known to have voted with the minority. This unusual strength of opposition, no doubt, produced the change next day.

[2] 13 May. Twenty-one peers were entered as dissentient. The commons inquired whether it were intended by this that the bishops should vote on the pardon of Danby, which the upper house declined to answer, but said they could not vote on the trial of the five popish lords, 15. 17. 27. May.

[3] See the report of a committee in Journs. 26 May; or Hatsell's Precedents, iv. 374.

The main point in controversy, whether a general or special pardon from the king could be pleaded in answer to an impeachment of the commons, so as to prevent any further proceedings in it, never came to a regular decision. It was evident that a minister who had influence enough to obtain such an indemnity, might set both houses of parliament at defiance; the pretended responsibility of the crown's advisers, accounted the palladium of our constitution, would be an idle mockery, if not only punishment could be averted, but inquiry frustrated. Even if the king could remit the penalties of a guilty minister's sentence upon impeachment, it would be much, that public indignation should have been excited against him, that suspicion should have been turned into proof, that shame and reproach, irremissible by the great seal, should avenge the wrongs of his country. It was always to be presumed, that a sovereign undeceived by such a judicial inquiry, or sensible to the general voice it roused, would voluntarily, or at least prudently, abandon an unworthy favourite. Though it might be admitted that long usage had established the royal prerogative of granting pardons under the great seal, even before trial, and that such pardons might be pleaded in bar, (a prerogative indeed which ancient statutes, not repealed, though gone into disuse, or rather in no time acted upon, had attempted to restrain,) yet we could not infer that it extended to cases of impeachment. In ordinary criminal proceedings by indictment the king was before the court as prosecutor, the suit was in his name; he might stay the process at his pleasure, by entering a "noli prosequi;" to pardon, before or after judgment, was a branch of the same prerogative; it was a great constitutional trust, to be exercised at his discretion. But in an appeal, or accusation of felony, brought by the injured party, or his next of blood, a proceeding wherein the king's name did not appear, it was undoubted that he could not remit the capital sentence. The same principles seemed applicable to an impeachment at the suit of the commons of England, demanding justice from the supreme tribunal of the other house of parliament. It could not be denied that James had remitted the whole sentence upon lord Bacon. But impeachments were so unusual at that time, and the privileges of parliament so little out of dispute, that no great stress could be laid on this precedent.

Such must have been the course of arguing, strong on political, and specious on legal grounds, which induced the commons to resist the plea put in by lord Danby. Though this question remained in suspense on the present occasion, it was finally decided by the legislature in the act of settlement; which provides that no pardon under the great seal of England be pleadable to an impeachment of the commons in parliament. (13 W. III. c. 2.) These expressions seem tacitly to concede the crown's right of granting a pardon after sentence; which, though perhaps it could not well be distinguished in point of law from a pardon pleadable in bar, stands on a very different footing, as has been observed above, with respect to constitutional policy. Accordingly upon the impeachment of the six peers who had been concerned in the rebellion of 1715, the house of lords after sentence passed, having come to a resolution on debate that the king had a right to reprieve in cases of impeachment, addressed him to exercise that prerogative as to

such of them as should deserve his mercy; and three of the number were in consequence pardoned.[1]

3. The impeachment of Danby first brought forward another question of hardly less magnitude, and remarkable as one of the few great points in constitutional law, which have been discussed and finally settled within the memory of the present generation: I mean the continuance of an impeachment by the commons from one parliament to another. Though this has been put at rest by a determination altogether consonant to maxims of expediency, it seems proper in this place to show briefly the grounds upon which the argument on both sides rested.

In the earlier period of our parliamentary records, the business of both houses, whether of a legislative or judicial nature, though often very multifarious, was despatched with the rapidity natural to comparatively rude times, by men impatient of delay, unused to doubt, and not cautious in the proof of facts or attentive to the subtleties of reasoning. The session, generally speaking, was not to terminate till the petitions in parliament for redress had been disposed of, whether decisively or by reference to some more permanent tribunal. Petitions for alteration of the law, presented by the commons, and assented to by the lords, were drawn up into statutes by the king's council just before the prorogation or dissolution. They fell naturally to the ground, if the session closed before they could be submitted to the king's pleasure. The great change that took place in the reign of Henry VI., by passing bills complete in their form through the two houses instead of petitions, while it rendered manifest to every eye that distinction between legislative and judicial proceedings which the simplicity of older times had half concealed, did not affect this constitutional principle. At the close of a session, every bill then in progress through parliament became a nullity, and must pass again through all its stages before it could be tendered for the royal assent. No sort of difference existed in the effect of a prorogation and a dissolution; it was even maintained that a session made a parliament.

During the fifteenth and sixteenth centuries, writs of error from inferior courts to the house of lords became far less usual than in the preceding age; and when they occurred, as error could only be assigned on a point of law appearing on the record, they were quickly decided with the assistance of the judges. But when they grew more frequent, and especially when appeals from the chancellor, requiring often a tedious examination of depositions, were brought before the lords, it was found that a sudden prorogation might often interrupt a decision; and the question arose, whether writs of error, and other proceedings of a similar nature, did not, according to precedent or analogy, cease, or in technical language abate, at the close of a session. An order was accordingly made by the house on March 11. 1673, that "the lords' committees for privileges should inquire whether an appeal to this house either by writ of error or petition, from the proceedings of any other court being depending, and not determined in one session of parliament, continue in statu quo unto the next session of parliament,

[1] Parl. Hist. vii. 283. Mr. Lechmere, a very ardent whig, then solicitor-general, and one of the managers on the impeachment, had most confidently denied this prerogative. Id. 233.

without renewing the writ of error or petition, or beginning all anew." The committee reported on the 29th of March, after mis-reciting the order of reference to them in a very remarkable manner, by omitting some words and interpolating others, so as to make it far more extensive than it really was,[1] that upon the consideration of precedents, which they specify, they came to a resolution that "businesses depending in one parliament or session of parliament have been continued to the next session of the same parliament, and the proceedings thereupon have remained in the same state in which they were left when last in agitation." The house approved of this resolution, and ordered it accordingly. (Lords' Journals.)

This resolution was decisive as to the continuance of ordinary judicial business beyond the termination of a session. It was still open to dispute, whether it might not abate by a dissolution. And the peculiar case of impeachment, to which, after the dissolution of the long parliament in 1678, every one's attention was turned, seemed to stand on different grounds. It was referred therefore to the committee of privileges, on the 11th of March, 1679, to consider whether petitions of appeal which were presented to this house in the last parliament be still in force to be proceeded on. Next day it is referred to the same committee, on a report of the matter of fact as to the impeachments of the earl of Danby and the five popish lords in the late parliament, to consider of the state of the said impeachments and all the incidents relating thereto, and to report to the house. On the 18th of March lord Essex reported from the committee, that, "upon perusal of the judgment of this house of the 29th of March, 1673, they are of opinion, that in all cases of appeals and writs of error they continue, and are to be proceeded on, in statu quo, as they stood at the dissolution of the last parliament, without beginning de novo. . . . . And upon consideration had of the matter referred to their lordships concerning the state of the impeachments brought up from the house of commons the last parliament, etc. . . . . they are of opinion that the dissolution of the last parliament doth not alter the state of the impeachments brought up by the commons in that parliament." This report was taken into consideration next day by the house; and after a debate, which appears from the journals to have lasted some time, and the previous question moved and lost, it was resolved to agree with the committee. (Lords' Journals. 78 peers were present.)

This resolution became for some years the acknowledged law of parliament. Lord Stafford, at his trial in 1680, having requested that his counsel might be heard as to the point, whether impeachments could go from one parliament to another, the house took no notice of this question; though they consulted the judges about another which he had put, as to the necessity of two witnesses to every overt act of treason. (Id. 4th Dec. 1680.) Lord Danby and chief-justice Scroggs petitioned the lords in the Oxford parliament, one to have the charges against him dismissed, the other to be bailed; but neither take the

[1] Instead of the words in the order, "from the proceedings o any other court," the following are inserted, "or any other business wherein their lordships act as in a court of judicature, and not in their legislative capacity." The importance of thi alteration as to the question of impeachment is obvious.

objection of an intervening dissolution.[1] And lord Danby, after the dissolution of three successive parliaments since that in which he was impeached, having lain for three years in the Tower, when he applied to be enlarged on bail by the court of king's bench in 1682, was refused by the judges, on the ground of their incompetency to meddle in a parliamentary impeachment; though, if the prosecution were already at an end, he would have been entitled to an absolute discharge. On Jefferies becoming chief-justice of the king's bench, Danby was admitted to bail.[2] But in the parliament of 1685, the impeached lords having petitioned the house, it was resolved, that the order of the 19th of March, 1679, be reversed and annulled as to impeachments; and they were consequently released from their recognisances. (Lords' Journ. May 22. 1685.)

The first of these two contradictory determinations is not certainly free from that reproach which so often contaminates our precedents of parliamentary law, and renders an honest man reluctant to show them any greater deference than is strictly necessary. It passed during the violent times of the popish plot; and a contrary resolution would have set at liberty the five catholic peers committed to the Tower, and enabled them probably to quit the kingdom before a new impeachment could be preferred. It must be acknowledged, at the same time, that it was borne out, in a considerable degree, by the terms of the order of 1673, which was liable to no suspicion of answering a temporary purpose; and that the court party in the house of lords were powerful enough to have withstood any flagrant innovation in the law of parliament. As for the second resolution, that of 1685, which reversed the former, it was passed in the very worst of times; and, if we may believe the protest, signed by the earl of Anglesea and three other peers, with great precipitation and neglect of usual forms. It was not however annulled after the revolution; but, on the contrary, received what may seem at first sight a certain degree of confirmation, from an order of the house of lords in 1690, on the petitions of lords Salisbury and Peterborough, who had been impeached in the preceding parliament, to be discharged; which was done after reading the resolutions of 1679 and 1685, and a long debate thereon. But as a general pardon had come out in the mean time, by which the judges held that the offences imputed to these two lords had been discharged, and as the commons showed no disposition to follow up their impeachment against them, no parliamentary reasoning can perhaps be founded on this precedent.[3] In the case of the duke of Leeds, impeached by the commons in 1695, no further proceedings were had; but the lords did not make an order for his discharge from the accusation till five years after three dissolutions had intervened; and grounded it upon the commons not proceeding with the impeachment. They did not, however, send a message

[1] Lords' Journ. 24 Mar., 1681. The very next day the commons sent a message to demand judgment on the impeachment against him. Com. Journ. 25 Mar.

[2] Shower's Reports, ii. 335. "He was bailed to appear at the lords' bar the first day of the then next parliament." The catholic lords were bailed the next day. This proves that the impeachment was not held to be at an end.

[3] Upon considering the proceedings in the house of lords on this subject, Oct. 6. and 30. 1690, and especially the protest signed by eight peers on the latter day, there can be little doubt that their release had been chiefly grounded on the act of grace, and not on the abandonment of the impeachment.

to inquire if the commons were ready to proceed, which, according to parliamentary usage, would be required in case of a pending impeachment. The cases of lords Somers, Orford, and Halifax were similar to that of the duke of Leeds, except that so long a period did not intervene. These instances, therefore, rather tend to confirm the position, that impeachment did not ipso facto abate by a dissolution, notwithstanding the reversal of the order of 1679. In the case of the earl of Oxford, it was formally resolved in 1717, that an impeachment does not determine by a prorogation of parliament; an authority conclusive to those who maintain that no difference exists in the law of parliament between the effects of a prorogation and a dissolution. But it is difficult to make all men consider this satisfactory.

The question came finally before both houses of parliament in 1791, a dissolution having intervened during the impeachment of Mr. Hastings; an impeachment which, far unlike the rapid proceedings of former ages, had already been for three years before the house of lords, and seemed likely to run on to an almost interminable length. It must have been abandoned in despair if the prosecution had been held to determine by the late dissolution. The general reasonings, and the force of precedents on both sides, were urged with great ability, and by the principal speakers in both houses; the lawyers generally inclining to maintain the resolution of 1685, that impeachments abate by a dissolution, but against still greater names which were united on the opposite side. In the end, after an ample discussion, the continuance of impeachments, in spite of a dissolution, was carried by very large majorities; and this decision, so deliberately taken, and so free from all suspicion of partiality, (the majority in neither house, especially the upper, bearing any prejudice against the accused person,) as well as so consonant to principles of utility and constitutional policy, must for ever have set at rest all dispute upon the question.

The year 1678, and the last session of the parliament that had continued since 1661, were memorable for the great national delusion of the popish plot. For national it was undoubtedly to be called, and by no means confined to the whig or opposition party, either in or out of parliament, though it gave them much temporary strength. And though it were a most unhappy instance of the credulity begotten by heated passions and mistaken reasoning, yet there were circumstances, and some of them very singular in their nature, which explain and furnish an apology for the public error, and which it is more important to point out and keep in mind, than to inveigh, as is the custom in modern times, against the factiousness and bigotry of our ancestors. For I am persuaded that we are far from being secure from similar public delusions, whenever such a concurrence of coincidences and seeming probabilities shall again arise, as misled nearly the whole people of England in the popish plot.[1]

It is first to be remembered that there was really and truly a popish plot in being, though not that which Titus Oates and his associates

[1] Bishop Parker is not wrong in saying that the house of commons had so long accustomed themselves to strange fictions about popery, that, upon the first discovery of Oates's plot, they readily believed everything he said; for they had long expected whatever he declared, Hist sui temp. p. 248 of the translation.

pretended to reveal,—not merely in the sense of Hume, who, arguing from the general spirit of proselytism in that religion, says there is a perpetual conspiracy against all governments, protestant, Mahometan, and pagan, but one alert, enterprising, effective, in direct operation against the established protestant religion in England. In this plot the king, the duke of York, and the king of France were chief conspirators; the Romish priests, and especially the jesuits, were eager co-operators. Their machinations and their hopes, long-suspected, and in a general sense known, were divulged by the seizure and publication of Coleman's letters. "We have here," he says, in one of these, "a mighty work upon our hands, no less than the conversion of three kingdoms, and by that perhaps the utter subduing of a pestilent heresy, which has a long time domineered over this northern world. There were never such hopes since the death of our queen Mary as now in our days. God has given us a prince, who is become (I may say by miracle) zealous of being the author and instrument of so glorious a work; but the opposition we are sure to meet with is also like to be great; so that it imports us to get all the aid and assistance we can." These letters were addressed to father la Chaise, confessor of Louis XIV., and displayed an intimate connexion with France for the great purpose of restoring popery. They came to light at the very period of Oates's discovery; and though not giving it much real confirmation, could hardly fail to make a powerful impression on men unaccustomed to estimate the value and bearings of evidence.[1]

The conspiracy supposed to have been concerted by the jesuits at St. Omer's, and in which so many English catholics were implicated, chiefly consisted, as is well known, in a scheme of assassinating the king. Though the obvious falsehood and absurdity of much that the witnesses deposed in relation to this plot render it absolutely incredible, and fully acquit those unfortunate victims of iniquity and prejudice, it could not appear at the time an extravagant supposition, that an eager intriguing faction should have considered the king's life a serious obstacle to their hopes. Though as much attached in heart as his nature would permit to the catholic religion, he was evidently not inclined to take any effectual measures in its favour; he was but one year older than his brother, on the contingency of whose succession all their hopes rested, since his heiress was not only brought up in the protestant faith, but united to its most strenuous defender. Nothing could have been more anxiously wished at St. Omer's than the death of Charles; and it does not seem improbable that the atrocious fictions of Oates may have been originally suggested by some actual, though vague, projects of assassination, which he had heard in discourse among the ardent spirits of that college.

The popular ferment which this tale, however undeserving of credit, excited in a predisposed multitude, was naturally wrought to a higher pitch by the very extraordinary circumstances of sir Edmondbury

[1] Parl. Hist. 1024. 1035. State Trials, vii. 1. Kennet, 327. 337. 351. North's Examen, 129. 177. Ralph, 386. Burnet, i. 555. Scroggs tried Coleman with much rudeness and partiality; but his summing up in reference to the famous passage in the letters is not deficient in acuteness. In fact, this not only convicted Coleman, but raised a general conviction of the truth of a plot—and a plot there was, though not Oates's.

Godfrey's death. Even at this time, although we reject the imputation thrown on the catholics, and especially on those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North (Examen, p. 196.), but has not the slightest corroboration from any evidence; nor does it seem to have been suggested by the contemporary libellers of the court party. That he might have had, as an active magistrate, private enemies, whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered, nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck; and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence, on that occasion, was strongly to confirm the supposition that he had perished by the hands of assassins.[1] His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at the time, it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates, a circumstance not in itself highly important, but was supposed to have received the confidential communications of Coleman.[2]

Another circumstance, much calculated to persuade ordinary minds of the truth of the plot, was the trial of Reading, a Romish attorney, for tampering with the witnesses against the accused catholic peers, in order to make them keep out of the way.[3] As much clandestine dealing with witnesses creates a strong, and perhaps with some too strong a presumption of guilt, where justice is sure to be uprightly administered, men did not make a fair distinction as to times, when the violence of the court and jury gave no reasonable hope of escape; and when the most innocent party would much rather procure the

[1] R. v. Farwell and others. State Trials, viii. 1361. They were indicted for publishing some letters to prove that Godfrey had killed himself. They defended themselves by calling witnesses to prove the truth of the fact, which, though in a case of libel, Pemberton allowed. But their own witnesses proved that Godfrey's body had all the appearance of being strangled. The Roman catholics gave out, at the time of Godfrey's death, that he had killed himself; and hurt their own cause by foolish lies. North's Examen, p. 200.

[2] It was deposed by a remarkable witness, that Godfrey entertained apprehensions on account of what he had done as to the plot, and had said, "On my conscience, I believe I shall be the first martyr." State Trials, vii. 168. These little additional circumstances, which are suppressed by later historians, who speak of the plot as unfit to impose on any but the most bigoted fanatics, contributed to make up a body of presumptive and positive evidence from which human belief is rarely withheld.

It is remarkable, that the most acute and diligent historian we possess for those times, Ralph, does not in the slightest degree pretend to account for Godfrey's death; though in his general reflections on the plot, p. 555., he relies too much on the assertions of North and l'Estrange.

[3] State Trials, vii. 259. North's Examen, 240.

absence of a perjured witness than trust to the chance of disproving his testimony.

There was indeed good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The State Trials, none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial.[1] One Whitbread, a jesuit, having been indicted with several others, and the evidence not being sufficient, Scroggs discharged the jury of him, but ordered him to be kept in custody till more proof might come in. He was accordingly indicted again for the same offence. On his pleading that he had been already tried, Scroggs and North had the effrontery to deny that he had been ever put in jeopardy, though the witnesses for the crown had been fully heard before the jury were most irregularly and illegally discharged of him on the former trial. North said he had often known it done, and it was the common course of law. In the course of this proceeding, Bedloe, who had deposed nothing explicit against the prisoner on the former trial, accounted for this by saying, it was not then convenient; an answer with which the court and jury were content. (State Trials, 119. 315. 344.)

It is remarkable that, although the king might be justly surmised to give little credence to the pretended plot, and the duke of York was manifestly affected in his interests by the heats it excited, yet the judges most subservient to the court, Scroggs, North, Jones, went with all violence into the popular cry, till, the witnesses beginning to attack the queen, and to menace the duke, they found it was time to rein in, as far as they could, the passions they had instigated.[2] Pemberton, a more honest man in political matters, showed a remarkable intemper-

[1] State Trials, vol. vii. passim. On the trial of Green, Berry, and Hill, for Godfrey's murder, part of the story for the prosecution was, that the body was brought to Hill's lodgings on the Saturday, and remained there till Monday. The prisoner called witnesses who lodged in the same house, to prove that it could not have been there without their knowledge. Wild, one of the judges, assuming, as usual, the truth of the story as beyond controversy, said it was very suspicious that they should see or hear nothing of it: and another, Dolben, told them it was well they were not indicted. Id. 199. Jones summoning up the evidence on sir Thomas Gascoigne's trial at York, (an aged catholic gentleman, most improbably accused of accession to the plot), says to the jury: "Gentlemen, you have the king's witness on his oath; he that testifies against him is barely on his word, and he is a papist:" Id. 1039: thus deriving an argument from an iniquitous rule which, at that time, prevailed in our law, of refusing to hear the prisoner's witnesses upon oath. Gascoigne, however, was acquitted.

It would swell this note to an unwarrantable length, were I to extract so much of the trials, as might fully exhibit all the instances of gross partiality in the conduct of the judges. I must, therefore, refer my readers to the volume itself, a standing monument of the necessity of the revolution; not only as it rendered the judges independent of the crown, but as it brought forward those principles of equal and indifferent justice, which can never be expected to flourish but under the shadow of liberty.

[2] Roger North, whose long account of the popish plot is, as usual with him, a medley of truth and lies, acuteness and absurdity, represents his brother, the chief-justice, as perfectly immaculate in the midst of this degradation of the bench. The State Trials however show that he was as partial and unjust towards the prisoners as any of the rest, till the government thought it necessary to interfere. The moment when the judges veered round, was on the trial of sir George Wakeman, physician to the queen. Scroggs, who had been infamously partial against the prisoners upon every former occasion, now treated Oates and Bedloe as they deserved, though to the aggravation of his own disgrace. State Trials, vii. 619-686.

ance and unfairness in all trials relating to popery. Even in that of lord Stafford in 1680, the last, and perhaps the worst, proceeding under this delusion, though the court had a standing majority in the house of lords, he was convicted by fifty-five peers against thirty-one; the earl of Nottingham, lord-chancellor, the duke of Lauderdale, and several others of the administration voting him guilty, while he was acquitted by the honest Hollis and the acute Halifax.[1] So far was the belief in the popish plot, or the eagerness in hunting its victims to death, from being confined to the whig faction, as some writers have been willing to insinuate. None had more contributed to rouse the national outcry against the accused, and create a firm persuasion of the reality of the plot, than the clergy in their sermons, even the most respectable in their order, Sancroft, Sharp, Barlow, Burnet, Tillotson, Stillingfleet; inferring its truth from Godfrey's murder, or Coleman's letter, calling for the severest laws against catholics, and imputing to them the fire of London, nay, even the death of Charles I.[2]

Though the duke of York was not charged with participation in the darkest schemes of the popish conspirators, it was evident that his succession was the great aim of their endeavours, and evident also that he had been engaged in the more real and undeniable intrigues of Coleman. His accession to the throne, long viewed with just apprehension, now seemed to threaten such perils to every part of the constitution, as ought not supinely to be waited for, if any means could be devised to obviate them. This gave rise to the bold measure of the exclusion bill, too bold indeed for the spirit of the country, and the rock on which English liberty was nearly shipwrecked. In the long parliament, full as it was of pensioners and creatures of court influence, nothing so vigorous would have been successful. Even in the bill which excluded catholic peers from sitting in the house of lords, a proviso, exempting the duke of York from its operation, having been sent down from the other house, passed by a majority of two voices. (Parl. Hist. 1040.) But the zeal they showed against Danby induced the king to put an end to this parliament of seventeen years' duration: an event long ardently desired by the popular party, who foresaw their ascendancy in the new elections.[3] The next house of commons accord-

[1] State Trials, 1552. Parl. Hist. 1229. Stafford, though not a man of much ability, had rendered himself obnoxious as a prominent opposer of all measures intended to check the growth of popery. His name appears constantly in protests upon such occasions; as for instance, Mar. 3. 1678, against the bill for raising money for a French war. Reresby praises his defence very highly, p. 108. The duke of York, on the contrary, or his biographer, observes: "Those who wished lord Stafford well were of opinion that had he managed the advantages which were given him with dexterity, he would have made the greatest part of his judges ashamed to condemn him; but it was his misfortune to play his game worst when he had the best cards." P. 637.

[2] I take this from extracts out of those sermons, contained in a Roman catholic pamphlet printed in 1687, and entitled Good Advice to the Pulpits. The protestant divines did their cause no good by misrepresentation of their adversaries, and by their propensity to rudeness and scurrility. The former fault indeed existed in a much greater degree on the opposite side, but by no means the latter. See also a treatise by Barlow, published in 1679, entitled Popish Principles pernicious to Protestant Princes.

[3] See Marvell's "Seasonable Argument to persuade all the grand Juries in England to petition for a new Parliament." He gives very bad characters of the principal members on the court side; but we cannot take for granted all that comes from so unscrupulous a libeller. Sir Harbottle Grimstone had first thrown out, in the session of 1675, that a standing parliament was as great a grievance as a standing army, and that an application ought to be made to the king for a dissolution. This was not seconded; and met with much disapprobation from

ingly came together with an ardour not yet quenched by corruption; and after reviving the impeachments commenced by their predecessors, and carrying a measure long in agitation, a test[1] which shut the catholic peers out of parliament, went upon the exclusive bill. Their dissolution put a stop to this; and in the next parliament the lords rejected it.[2]

The right of excluding an unworthy heir from the succession was supported not only by the plain and fundamental principles of civil society, which establish the interest of the people to be the paramount object of political institutions, but by those of the English constitution. It had always been the better opinion among lawyers, that the reigning king with consent of parliament was competent to make any changes in the inheritance of the crown; and this, besides the acts passed under Henry VIII. empowering him to name his successor, was expressly enacted, with heavy penalties against such as should contradict it, in the thirteenth year of Elizabeth. The contrary doctrine indeed, if pressed to its legitimate consequences, would have shaken all the statutes that limit the prerogative; since, if the analogy of entails in private inheritances were to be resorted to, and the existing legislature should be supposed incompetent to alter the line of succession, they

both sides of the house. Parl. Hist. vii. 64. But the country party, in two years' time, had changed their views, and were become eager for a dissolution. An address to that effect was moved in the house of lords, and lost by only two voices, the duke of York voting for it. Id. 800. This is explained by a passage in Coleman's Letters, where that intriguer expresses his desire to see parliament dissolved, in the hope that another would be more favourable to the toleration of catholics. This must mean that the dissenters might gain an advantage over the rigorous church of England men, and be induced to come into a general indulgence.

[1] This test, 30 Car. II. stat. 2., is the declaration subscribed by members of both houses of parliament on taking their seats, that there is no transubstantiation of the elements in the Lord's Supper; and that the invocation of saints, as practised in the church of Rome, is idolatrous. The oath of supremacy was already taken by the commons, though not by the lords; and it is a great mistake to imagine that catholics were legally capable of sitting in the lower house before the act of 1679. But it had been the aim of the long parliament in 1642 to exclude them from the house of lords; and this was of course revived with greater eagerness, as the danger from their influence grew more apparent. A bill for this purpose passed the commons in 1675, but was thrown out by the peers. Journ., May 14. Nov. 8. It was brought in again in the spring of 1678. Parl. Hist. 990. In the autumn of the same year it was renewed, when the lords agreed to the oath of supremacy, but omitted the declaration against transubstantiation, so far as their own house was affected by it. Lord's Journ., Nov. 20. 1678. They also excepted the duke of York from the operation of the bill; which exception was carried in the commons by two voices. Parl. Hist. 1040. The duke of York and seven more lords protested.

The violence of those times on all sides will account for this theological declaration; but it is more difficult to justify its retention at present. Whatever influence a belief in the pope's supremacy may exercise upon men's politics, it is hard to see how the doctrine of transubstantiation can directly affect them; and surely he who renounces the former, cannot be very dangerous on account of his adherence to the latter. Nor is it less extraordinary to demand from any of those who usually compose a house of commons, the assertion that the practice of the church of Rome in the invocation of saints is idolatrous; since, even on the hypothesis that a country gentleman has a clear notion of what is meant by idolatry, he is, in many cases, wholly out of the way of knowing what the church of Rome, or any of its members, believe or practise. The invocation of saints, as held and explained by that church in the council of Trent, is surely not idolatrous, with whatever error it may be charged; but the practice at least of uneducated Roman catholics seems fully to justify the declaration; understanding it to refer to certain superstitions, countenanced or not eradicated by their clergy. I have sometimes thought that the legislator of a great nation sets off oddly by solemnly professing theological positions about which he knows nothing, and swearing to the possession of property which he does not enjoy.

[2] The second reading of the exclusion bill was carried, May 21. 1679, by 207 to 128. The debates are in Parl. Hist. 1125, et post. In the next parliament it was carried without a division. Sir Leoline Jenkins alone seems to have taken the high ground, that "parliament cannot disinherit the heir of the crown; and that if such an act should pass, it would be invalid in itself." Id. 1191.

could as little impair as they could alienate, the indefeasible rights of the heir; nor could he be bound by restrictions to which he had never given his assent. It seemed strange to maintain that the parliament could reduce a future king of England to the condition of a doge of Venice, by shackling and taking away his authority, and yet could not divest him of a title which they could render little better than a mockery. Those accordingly who disputed the legislative omnipotence of parliament did not hesitate to assert that statutes infringing the prerogative were null of themselves. With the court lawyers conspired the clergy, who pretended these matters of high policy and constitutional law to be within their province, and, with hardly an exception, took a zealous part against the exclusion. It was indeed a measure repugnant to the common prejudices of mankind; who, without entering on the abstract competency of parliament, are naturally accustomed in an hereditary monarchy to consider the next heir as possessed of a right, which, except through necessity, or notorious criminality, cannot be justly divested. The mere profession of a religion different from the established, does not seem, abstractedly considered, an adequate ground for unsettling the regular order of inheritance. Yet such was the narrow bigotry of the sixteenth and seventeeth centuries, which died away almost entirely among protestants in the next, that even the trifling differences between Lutherans and Calvinists had frequently led to alternate persecutions in the German states, as a prince of one or the other denomination happened to assume the government. And the Romish religion, in particular, was in that age of so restless and malignant a character, that unless the power of the crown should be far more strictly limited than had hitherto been the case, there must be a very serious danger from any sovereign of that faith; and the letters of Coleman, as well as other evidences, made it manifest that the duke of York was engaged in a scheme of general conversion, which, from his arbitrary temper and the impossibility of succeeding by fair means, it was just to apprehend, must involve the subversion of all civil liberty. Still this was not distinctly perceived by persons at a distance from the scene, imbued, as most of the gentry were, with the principles of the old cavaliers, and those which the church had inculcated. The king, though hated by the dissenters, retained the affections of that party, who forgave the vices they deplored, to his father's memory and his personal affability. It appeared harsh and disloyal to force his consent to the exclusion of a brother in whom he saw no crime, and to avoid which he offered every possible expedient. There will always be found in the people of England a strong unwillingness to force the reluctance of their sovereign—a latent feeling, of which parties in the heat of their triumphs are seldom aware, because it does not display itself until the moment of re-action. And although, in the less settled times before the revolution, this personal loyalty was highly dangerous, and may still, no doubt, sometimes break out so as to frustrate objects of high import to the public weal,

[1] While the exclusion bill was passing the commons, the king took the pains to speak himself to almost every lord, to dissuade him from assenting to it when it should come up; telling them, at the same time, let what would happen, he would never suffer such a villanous bill to pass. Life of James, 553.

it is on the whole a salutary temper for the conservation of the monarchy, which may require such a barrier against the encroachments of factions and the fervid passions of the multitude.

The bill of exclusion was drawn with as much regard to the inheritance of the duke of York's daughters as they could reasonably demand, or as any lawyer engaged for them could have shown; though something different seems to be insinuated by Burnet. It provided that the imperial crown of England should descend to and be enjoyed by such person or persons successively during the life of the duke of York, as should have inherited or enjoyed the same in case he were naturally dead. If the princess of Orange was not expressly named, (which, the bishop tells us, gave a jealousy, as though it were intended to keep that matter still undetermined,) this silence was evidently justified by the possible contingency of the birth of a son to the duke, whose right there was no intention in the framers of the bill to defeat. But a large part of the opposition had unfortunately other objects in view. It had been the great error of those who understood the arbitrary counsels of Charles II. to have admitted into their closest confidence, and in a considerable degree to the management of their party, a man so destitute of all honest principle as the earl of Shaftesbury. Under his contaminating influence, their passions became more untractable, their connexions more seditious and democratical, their schemes more revolutionary; and they broke away more and more from the line of national opinion, till a fatal re-action involved themselves in ruin, and exposed the cause of public liberty to its most imminent peril. The countenance and support of Shaftesbury brought forward that unconstitutional and most impolitic scheme of the duke of Monmouth's succession. There could hardly be a greater insult to a nation used to respect its hereditary line of kings, than to set up the bastard of a prostitute, without the least pretence of personal excellence or public services, against a princess of known virtue and attachment to the protestant religion. And the effrontery of this attempt was aggravated by the libels eagerly circulated to dupe the credulous populace into a belief of Monmouth's legitimacy. The weak young man, lured on to destruction by the arts of intriguers and the applause of the multitude, gave just offence to sober-minded patriots, who knew where the true hopes of public liberty were anchored, by a kind of triumphal procession through parts of the country, and by other indications of a presumptuous ambition.[1]

[1] Ralph, p. 498. The atrocious libel, entitled, "An Appeal from the Country to the City," published in 1679, and usually ascribed to Ferguson (though said in Biog. Brit. art. L'Estrange, to be written by Charles Blount), was almost sufficient of itself to excuse the return of public opinion towards the throne. State Tracts, temp. Car. II; Ralph, i, 476.; Parl. Hist. iv. Appen. The king is personally struck at in this tract with the utmost fury; the queen is called Agrippina, in allusion to the infamous charges of Oates; Monmouth is held up as the hope of the country. "He will stand by you, therefore you ought to stand by him. He who hath the worst title always makes the best king." One Harris was tried for publishing this pamphlet. The jury at first found him guilty of selling; an equivocal verdict, by which they probably meant to deny, or at least to disclaim, any assertion of the libellous character of the publication. But Scroggs telling them it was their province to say guilty or not guilty, they returned a verdict of guilty. State Trials, vii. 925.

Another arrow dipped in the same poison was a "Letter to a Person of Honour concerning the Black Box." Somers Tracts, viii. 189. The story of a contract of marriage between the king and Mrs. Waters, Monmouth's mother, concealed in a black box, had lately been current; and the former had taken pains to expose its falsehood by a public examination of the gentle-

If any apology can be made for the encouragement given by some of the whig party, for it was by no means general, to the pretensions of Monmouth, it must be found in their knowledge of the king's affection for him, which furnished a hope that he might more easily be brought in to the exclusion of his brother for the sake of so beloved a child, than for the prince of Orange. And doubtless there was a period when Charles's acquiescence in the exclusion did not appear so unattainable, as from his subsequent line of behaviour we are apt to consider it. It appears from the recently published life of James, that in the autumn of 1680 the embarrassment of the king's situation, and the influence of the duchess of Portsmouth, who had gone over to the exclusionists, made him seriously deliberate on abandoning his brother.[1] Whether from natural instability of judgment, from the steady adherence of France to the duke of York, or from observing the great strength of the tory party in the house of lords, where the bill was rejected by a majority of 63 to 30, he soon returned to his former disposition. It was long, however, before he treated James with perfect cordiality. Conscious of his own insincerity in religion, which the duke's bold avowal of an obnoxious creed seemed to reproach, he was provoked at bearing so much of the odium, and incurring so many of the difficulties, which attended a profession that he had not ventured to make. He told Hyde, before the dissolution of the parliament of 1680, that it would not be in his power to protect his brother any longer, if he did not conform and go to church. (Life of James, p. 657.) Hyde himself, and the duke's other friends, had never ceased to urge him on this subject. Their importunity was renewed by the king's order, even after the dissolution of the Oxford parliament; and it seems to have been the firm persuasion of most about the court that he could only be preserved by conformity to the protestant religion. He justly apprehended the consequences of a refusal; but inflexibly conscientious on this point, he braved whatever might arise from the timidity or disaffection of the ministers and the selfish fickleness of the king.

In the apprehensions excited by the king's unsteadiness, and the defection of the duchess of Portsmouth, he deemed his fortunes so much in jeopardy, as to have resolved on exciting a civil war, rather

man whose name had been made use of. This artful tract is intended to keep up the belief of Monmouth's legitimacy, and even to graft it on the undeniable falsehood of that tale; as if it had been purposely fabricated to delude the people by setting them on a wrong scent. See also another libel of the same class, p. 197.

Though Monmouth's illegitimacy is past all question, it has been observed by Harris, that the princess of Orange, in writing to her brother about Mrs. Waters, in 1655, twice names her as his wife. Thurloe, i. 665., quoted in Harris's Lives, iv. 168. But though this was a scandalous indecency on her part, it proves no more than that Charles, like other young men in the heat of passion, was foolish enough to give that appellation to his mistress; and that his sister humoured him in it.

Sidney mentions a strange piece of Monmouth's presumption. When he went to dine with the city in Oct., 1680, it was remarked that the bar, by which the heralds denote illegitimacy, had been taken off the royal arms on his coach. Letters to Saville, p. 52.

[1] Life of James, 592. et post. Compare Dalrymple, p. 265. et post. Barillon was evidently of opinion that the king would finally abandon his brother. Sunderland joined the duchess of Portsmouth, and was one of the 30 peers who voted for the bill in Nov., 1680. James charged Godolphin also with deserting him, p. 615. But his name does not appear in the protest signed by 25 peers; though that of the privy seal, lord Anglesea, does. The duchess of Portsmouth sat near the commons at Stafford's trial, "dispensing her sweetmeats and gracious looks among them." P. 638.

than yield to the exclusion. He had already told Barillon that the royal authority could be re-established by no other means.[1] The episcopal party in Scotland had gone such lengths that they could hardly be safe under any other king. The catholics of England were of course devoted to him. With the help of these he hoped to show himself so formidable, that Charles would find it his interest to quit that cowardly line of politics, to which he was sacrificing his honour and affections. Louis, never insensible to any occasion of rendering England weak and miserable, directed his ambassador to encourage the duke in this guilty project with the promise of assistance. (Dalrymple, 277. Nov. 1680.) It seems to have been prevented by the wisdom or public spirit of Churchill, who pointed out to Barillon the absurdity of supposing that the duke could stand by himself in Scotland. This scheme of lighting up the flames of civil war in three kingdoms for James's private advantage, deserves to be more remarked than it has hitherto been at a time when his apologists seem to have become numerous. If the designs of Russell and Sidney for the preservation of their country's liberty are blamed as rash and unjustifiable, what name shall we give to the project of maintaining the pretensions of an individual by means of rebellion and general bloodshed?

It is well known that those who took a concern in the maintenance of religion and liberty, were much divided as to the best expedients for securing them; some, who thought the exclusion too violent, dangerous, or impracticable, preferring the enactment of limitations on the prerogatives of a catholic king. This had begun in fact from the court, who passed a bill through the house of lords in 1677, for the security, as it was styled, of the protestant religion. This provided that a declaration and oath against transubstantiation should be tendered to every king within fourteen days after his accession; that, on his refusal to take it, the ecclesiastical benefices in the gift of the crown should vest in the bishops, except that the king should name to every vacant see one out of three persons proposed to him by the bishops of the province. It enacted also, that the children of a king refusing such a test should be educated by the archbishop and two or three more prelates. This bill dropped in the commons; and Marvell speaks of it as an insidious stratagem of the ministry.[2] It is more easy, however, to give hard names to a measure originating with an obnoxious government, than to prove that it did not afford a considerable security to the established church, and impose a very remarkable limitation on the prerogative. But the opposition in the house of commons had probably conceived their scheme of exclusion, and would not hearken to any compromise. As soon as the exclusion became the topic of open discussion, the king repeatedly offered to grant every security that could be demanded consistently with the lineal succession. Hollis,

[1] Il est persuadé que l'autorité royale ne se peut rétablir en Angleterre que par une guerre civile. Aug. 19. 1680. Dalrymple, 265.

[2] Marvell's Growth of Popery, in State Tracts, temp. Car. II. p. 98. Parl. Hist. 853. The second reading was carried by 127 to 88. Serjeant Maynard, who was probably not in the secrets of his party, seems to have been surprised at their opposition. An objection with Marvell, and not by any means a bad one, would have been that the children of the royal family were to be consigned for education to the sole government of bishops. The duke of York, and thirteen other peers, protested against this bill, not all of them from the same motives; as may be collected from their names. Lords' Journs., 13th and 15th Mar., 1679.

Halifax, and for a time Essex, as well as several eminent men in the lower house, were in favour of limitations.[1] But those which they intended to insist upon, were such encroachments on the constitutional authority of the crown, that except a title and revenue, which Charles thought more valuable than all the rest, a popish king would enjoy no one attribute of royalty. The king himself, on the 30th of April, 1679, before the heats on the subject had become so violent as they were the next year, offered not only to secure all ecclesiastical preferments from the control of a popish successor, but to provide that the parliament in being at a demise of the crown, or the last that had been dissolved, should immediately sit and be indissoluble for a certain time; that none of the privy council, nor judges, nor lord lieutenant, nor deputy lieutenant, nor officer of the navy, should be appointed during the reign of a catholic king, without consent of parliament. He offered at the same time most readily to consent to any further provision that could occur to the wisdom of parliament for the security of religion and liberty consistently with the right of succession. Halifax, the eloquent and successful opponent of the exclusion, was the avowed champion of limitations. It was proposed, in addition to these offers of the king, that the duke, in case of his accession, should have no negative voice on bills; that he should dispose of no civil or military posts without the consent of parliament; that a council of forty-one, nominated by the two houses, should sit permanently during the recess or interval of parliament, with power of appointing to all vacant offices, subject to the future approbation of the lords and commons. (Com. Journ., 23rd Nov. 1680, 8th Jan. 1681.) These extraordinary innovations would, at least for the time, have changed our constitution into a republic; and justly appeared to many persons more revolutionary than an alteration in the course of succession. The duke of York looked on them with dismay; Charles indeed privately declared, that he would never consent to such infringements of the prerogative. (Life of James, 634. 671. Dalrymple, p. 307.) It is not, however, easy to perceive how he could have escaped from the necessity of adhering to his own propositions, if the house of commons would have relinquished the bill of exclusion. The prince of Orange, who was doubtless in secret not averse to the latter measure, declared strongly against the plan of restrictions, which a protestant successor might not find it practicable to shake off. Another expedient, still more ruinous to James than that of limitations, was what the court itself suggested in the Oxford parliament, that the duke retaining the title of king, a regent should be appointed, in the person of the princess of Orange, with all the royal prerogatives; nay, that the duke, with his pageant crown on his head, should be banished from England during his life.[2]

[1] Lords Russell and Cavendish, sir W. Coventry and sir Thomas Littleton, seem to have been in favour of limitations. Lord J. Russell, p. 42. Ralph, 446. Sidney's Letters, p. 32. Temple and Shaftesbury, for opposite reasons, stood alone in the council against the scheme of limitations. Temple's Memoirs.

[2] Dalrymple, p. 301. Life of James, 660. 671. The duke gave himself up for lost when he heard of the clause in the king's speech declaring his readiness to hearken to any expedient but the exclusion. Birch and Hampden, he says, were in favour of this; but Fitzharris's business set the house in a flame, and determined them to persist in their former scheme. Reresby says, p. 19., confirmed by Parl. Hist. 132., it was supported by sir Thomas Littleton, who is said to have been originally against the bill of exclusion, as well as sir William Coventry.

This proposition, which is a great favourite with Burnet, appears liable to the same objections as were justly urged against a similar scheme at the revolution. It was certain that in either case James would attempt to obtain possession of power by force of arms; and the law of England would not treat very favourably those who should resist an acknowledged king in his natural capacity, while the statute of Henry VII. would, legally speaking, afford a security to the adherents of a de facto sovereign.

Upon the whole, it is very unlikely, when we look at the general spirit and temper of the nation, its predilection for the ancient laws, its dread of commonwealth and fanatical principles, the tendency of the upper ranks to intrigue and corruption, the influence and activity of the church, the bold counsels and haughty disposition of James himself, that either the exclusion, or such extensive limitations as were suggested in lieu of it, could have been carried into effect with much hope of a durable settlement. It would, I should conceive, have been practicable to secure the independence of the judges, to exclude placemen and notorious pensioners from the house of commons, to render the distribution of money among its members penal, to remove from the protestant dissenters, by a full toleration, all temptation to favour the court, and, above all, to put down the standing army. Though none perhaps of these divisions would have prevented the attempts of this and the next reign to introduce arbitrary power, they would have rendered them still more grossly illegal; and, above all, they would have saved that unhappy revolution of popular sentiment which gave the court encouragement and temporary success.

It was in the year 1679 that the words Whig and Tory were first heard in their application to English factions; and though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. There were then indeed questions in agitation, which rendered the distinction more broad and intelligible than it has generally been in later times. One of these, and the most important, was the bill of exclusion; in which, as it was usually debated, the republican principle, that all positive institutions of society are in order to the general good, came into collision with that of monarchy, which rests on the maintenance of a royal line, as either the end or at least the necessary means of lawful government. But as the exclusion was confessedly among those extraordinary measures, to which men of tory principles are sometimes compelled to resort in great emergencies, and which no rational whig espouses at any other time, we shall perhaps discern the formation of these grand political sects in the petitions for the sitting of parliament, and in the counter addresses of the opposite party.

In the spring of 1679, Charles established a new privy council, by the advice of sir William Temple, consisting in great part of those eminent men in both houses of parliament, who had been most prominent in their opposition to the late ministry.[1] He publicly declared

Sidney's Letters, p. 32. It was opposed by Jones, Winnington, Booth, and, if the Parl. Hist. be right, by Hampden and Birch.

[1] Temple's Memoirs. He says their revenues in land or offices amounted to 300,000*l.* per annum; whereas those of the house of commons seldom exceeded 400,000*l.* The king objected much to admitting Halifax; but himself proposed Shaftesbury, much against Temple's wishes.

his resolution to govern entirely by the advice of this council, and that of parliament. The duke of York was kept in what seemed a sort of exile at Brussels.[1] But the just suspicion attached to the king's character prevented the commons from placing much confidence in this new ministry; and, as frequently happens, abated their esteem for those who, with the purest intentions, had gone into the council.[2] They had soon cause to perceive that their distrust had not been excessive. The ministers were constantly beaten in the house of lords; an almost certain test in our government, of the court's insincerity. (See the protests in 1679, passim.) The parliament was first prorogued, then dissolved; against the advice, in the latter instance, of the majority of that council by whom the king had pledged himself to be directed. A new parliament, after being summoned to meet in October, 1679, was prorogued for a twelvemonth without the avowed concurrence of any member of the council. Lord Russell, and others of the honester party, withdrew from a board where their presence was only asked in mockery or deceit; and the whole specious scheme of Temple came to nothing before the conclusion of the year which had seen it displayed. (Temple's Mem. Life of James, 581.) Its author, chagrined at the disappointment of his patriotism and his vanity, has sought the causes of failure in the folly of Monmouth and perverseness of Shaftesbury. He was not aware, at least in their full extent, of the king's intrigues at this period. Charles, who had been induced to take those whom he most disliked into his council, with the hope of obtaining money from parliament, or of parrying the exclusion bill, and had consented to the duke of York's quitting England, found himself enthralled by ministers whom he could neither corrupt nor deceive; Essex, the firm and temperate friend of constitutional liberty in power as he had been out of it, and Halifax, not yet led away by ambition or resentment from the cause he never ceased to approve. He had recourse therefore to his accustomed refuge, and humbly implored the aid of Louis against his own council and parliament. He conjured his patron not to lose this opportunity of making England

The funds in Holland rose on the news. Barillon was displeased, and said it was making "des états, et non des conseils;" which was not without weight, for the king had declared he would take no measure, nor even choose any new counsellor, without their consent. But the extreme disadvantage of the position in which this placed the crown rendered it absolutely certain that it was not submitted to with sincerity. Lady Portsmouth told Barillon, the new ministry was formed in order to get money from parliament. Another motive, no doubt, was to prevent the exclusion bill.

[1] Life of James, 558. On the king's sudden illness, Aug. 22. 1679, the ruling ministers, Halifax, Sunderland, and Essex, alarmed at the anarchy which might come on his death, o. which Shaftesbury and Monmouth would profit, sent over for the duke; but soon endeavoured to make him go into Scotland; and, after a struggle against the king's tricks to outwit them, succeeded in this object. Id. p. 570. et post.

[2] Temple. Reresby, p. 89. "So true it is," he says, "that there is no wearing the court and country livery together." Thus also Algernon Sidney, in his letters to Saville, p. 16. "The king certainly inclines not to be so stiff as formerly in advancing only those that exalt prerogative; but the earl of Essex, and some others that are coming into play thereupon, cannot avoid being suspected of having intentions different from what they have hitherto professed." He ascribed the change of ministry at this time to Sunderland. "If he and two more [Essex and Halifax] can well agree among themselves, I believe they will have the management of almost all business, and may bring much honour to themselves and good to our nation." April 21. 1679. But he writes afterwards, Sept. 8., that Halifax and Essex were become very unpopular, p. 50. "The bare being preferred," says secretary Coventry, "maketh some of them suspected, though not criminal." Lord J. Russell's Life of Lord Russell, p. 90.

for ever dependent upon France. These are his own words, such at least as Barillon attributes to him. (Dalrymple, p. 230. 237.) In pursuance of this overture, a secret treaty was negotiated between the two kings; whereby, after a long haggling, Charles, for a pension of 1,000,000 livres annually during three years, obliged himself not to assemble parliament during that time. This negotiation was broken off, through the apprehensions of Hyde and Sunderland, who had been concerned in it, about the end of November 1679, before the long prorogation which is announced in the Gazette by a proclamation of December 11th. But the resolution having been already taken not to permit the meeting of parliament, Charles persisted in it as the only means of escaping the bill of exclusion, even when deprived of the pecuniary assistance to which he had trusted.

Though the king's behaviour on this occasion exposed the fallacy of all projects for reconciliation with the house of commons, it was very well calculated for his own ends: nor was there any part of his reign wherein he acted with so much prudence, as from this time to the dissolution of the Oxford parliament. The scheme concerted by his adversaries, and already put in operation, of pouring in petitions from every part of the kingdom for the meeting of parliament, he checked in the outset by a proclamation, artfully drawn up by chief-justice North, which, while it kept clear of any thing so palpably unconstitutional as a prohibition of petitions, served the purpose of manifesting the king's dislike to them, and encouraged the magistrates to treat all attempts that way as seditious and illegal, while it drew over the neutral and lukewarm to the safer and stronger side.[1] Then were first ranged against each other the hosts of whig and tory, under their banners of liberty or loyalty; each zealous, at least in profession, to maintain the established constitution, but the one seeking its security by new maxims of government, the other by an adherence to the old. It must be admitted that petitions to the king from bodies of his subjects, intended to advise or influence him in the exercise of his undoubted prerogatives, such as the time of calling parliament together, familiar as they may now have become, had no precedent except one in the dark year 1640, and were repugnant to the ancient principles of our monarchy. The cardinal maxim of toryism is, that the king ought to exercise all his lawful prerogatives without the interference of unsolicited advice even of parliament, much less of the people. These novel efforts therefore were met by addresses from most of the grand juries, from the magistrates at quarter sessions, and from many corporations, expressing not merely their entire confidence in the king, but their abhorrence of the petitions for the assembling of parliament; a term which, having been casually used in one address, became the watchword of the whole party. (London Gazettes of 1680, passim.) Some allowance must be made for the exertions made by the court, especially through the judges of assize, whose charge to grand juries were always of a political nature. Yet there can be no doubt that the strength of the tories manifested itself beyond expectation. Sluggish

[1] Sir Roger North's account of this court stratagem. Examen of Kennet, 546. The proclamation itself, however, in the Gazette, 12th Dec. 1679, is more strongly worded than we should expect from North's account of it, and is by no means limited to *tumultuous* petitions.

and silent in its fields, like the animal which it has taken for its type, the deep-rooted loyalty of the English gentry to the crown may escape a superficial observer, till some circumstance calls forth an indignant and furious energy. The temper shown in 1680 was not according to what the late elections would have led men to expect, not even to that of the next elections for the parliament at Oxford. A large majority returned on both these occasions, and that in the principal counties as much as in corporate towns, were of the whig principle. It appears that the ardent zeal against popery in the smaller freeholders must have overpowered the natural influence of the superior classes. The middling and lower orders, particularly in towns, were clamorous against the duke of York and the evil counsellors of the crown. But with the country gentlemen, popery was scarce a more odious word than fanaticism; the memory of the late reign and of the usurpation was still recent, and in the violence of the commons, in the insolence of Monmouth and Shaftesbury, in the bold assaults upon hereditary right, they saw a faint image of that confusion which had once impoverished and humbled them. Meanwhile the king's dissimulation was quite sufficient for these simple loyalists; the very delusion of the popish plot raised his name for religion in their eyes, since his death was the declared aim of the conspirators; nor did he fail to keep alive this favourable prejudice by letting that imposture take its course, and by enforcing the execution of the penal laws against some unfortunate priests.[1]

It is among the great advantages of a court in its contention with the asserters of popular privileges, that it can employ a circumspect and dissembling policy, which is never found on the opposite side. The demagogues of faction, or the aristocratic leaders of a numerous assembly, even if they do not feel the influence of the passions they excite, which is rarely the case, are urged onwards by their headstrong followers, and would both lay themselves open to the suspicion of unfaithfulness and damp the spirit of their party, by a wary and temperate course of proceeding. Yet that incautious violence to which ill-judging men are tempted by the possession of power must in every case, and especially where the power itself is deemed an usurpation, cast them headlong. This was the fatal error of that house of commons which met in October, 1680; and to this the king's triumph may chiefly be ascribed. The addresses declaratory of abhorrence of petitions for the meeting of parliament were doubtless intemperate with respect to the petitioners; but it was preposterous to treat them as violations of privilege. A few precedents, and those in times of much heat and irregularity, could not justify so flagrant an encroachment on the rights of the private subject, as the commitments of men for a declaration so little affecting the constitutional rights and functions of parliament.[2] The expulsion of Withens, their own member, for promoting one of these addresses, though a violent measure, came in

[1] David Lewis was executed at Usk for saying mass, Aug. 27. 1679. State Trials, vii. 256. Other instances occur in the same volume; see especially p. 811. 859. 849. 857. Pemberton was more severe and unjust towards these unfortunate men than Scroggs. The king, as his brother tells us, came unwillingly into these severities to prevent worse. Life of James, 583.

[2] Journals, passim. North's Examen, 377. 561.

point of law within their acknowledged authority.[1] But it was by no means a generally received opinion in that age, that the house of commons had an unbounded jurisdiction, directly or indirectly, over their constituents. The lawyers, being chiefly on the side of prerogative, inclined at least to limit very greatly this alleged power of commitment for breach of privilege or contempt of the house. It had very rarely, in fact, been exerted, except in cases of serving legal process on members or other molestation, before the long parliament of Charles I.; a time absolutely discredited by one party, and confessed by every reasonable man to be full of innovation and violence. That the commons had no right of judicature was admitted; was it compatible to principles of reason and justice, that they could, merely by using the words contempt or breach of privilege in a warrant, deprive the subject of that liberty which the recent statute of Habeas Corpus had secured against the highest ministers of the crown? Yet one Thompson, a clergyman at Bristol, having preached some virulent sermons, wherein he had traduced the memory of Hampden for refusing the payment of ship-money, and spoken disrespectfully of queen Elizabeth, as well as insulted those who petitioned for the sitting of parliament, was sent for in custody of the serjeant to answer at the bar for his high misdemeanour against the privileges of that house; and was afterwards compelled to find security for his forthcoming to answer to an impeachment voted against him on these strange charges. (Journals, Dec. 24. 1680.) Many others were brought to the bar, not only for the crime of abhorrence, but for alleged misdemeanours still less affecting the privileges of parliament, such as remissness in searching for papists. Sir Robert Cann, of Bristol, was sent for in custody of the serjeant-at-arms, for publicly declaring that there was no popish, but only a presbyterian plot. A general panic mingled with indignation was diffused through the country, till one Stawell, a gentleman of Devonshire, had the courage to refuse compliance with the speaker's warrant; and the commons, who hesitated at such a time to risk an appeal to the ordinary magistrates, were compelled to let this contumacy go unpunished. If indeed we might believe the journals of the house, Stawell was actually in custody of the serjeant, though allowed a month's time on account of sickness. This was most probably a subterfuge to conceal the truth of the case. (Parl. Hist. i. 174.)

These encroachments under the name of privilege were exactly in the spirit of the long parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths, that 1641 was come about again. There appeared indeed for several months a very imminent danger of civil war. I have already mentioned the projects of the duke of York in case his brother had given way to the exclusion bill. There could be little reason to doubt that many of the opposite leaders were ready to try the question by arms. Reresby has related a conversation he had with lord Halifax immediately after the rejection of the bill, which shows the expectation of that able statesman, that the differences about the succession would end in civil war.[2]

[1] They went a little too far, however, when they actually seated sir William Waller in Withens's place for Westminster. Ralph, 514.

[2] Reresby's Memoirs, 106. Lord Halifax and he agreed, he says, on consideration, that the

The just abhorrence good men entertain for such a calamity, excites their indignation against those who conspicuously bring it on. And however desirous some of the court might be to strengthen the prerogative by quelling a premature rebellion, the commons were, in the eyes of the nation, far more prominent in accelerating so terrible a crisis. Their votes in the session of November, 1680, were marked by the most extravagant factiousness.[1] Their conduct in the short parliament held at Oxford in March, 1681, served still more to alienate the peaceable part of the community. That session of eight days was marked by the rejection of a proposal to vest all effective power during the duke of York's life in a regent, and by an attempt to screen the author of a treasonable libel from punishment, under the pretext of impeaching him at the bar of the upper house. It seems difficult not to suspect that the secret instigations of Barillon, and even his gold, had considerable influence on some of those who swayed the votes of this parliament.

Though the impeachment of Fitzharris, to which I have just alluded, was in itself a mere work of temporary faction, it brought into discussion a considerable question in our constitutional law, which deserves notice, both on account of its importance, and because a popular writer has advanced an untenable proposition on the subject. The commons impeached this man of high treason. The lords voted, that he should be proceeded against at common law. It was resolved in consequence, by the lower house, "that it is the undoubted right of the commons in parliament assembled, to impeach before the lords in parliament any peer or commoner for treason, or any other crime or misdemeanour: and that the refusal of the lords to proceed in parliament upon such impeachment is a denial of justice, and a violation of the constitution of parliament." (Com. Journs., March 26. 1681). It seems indeed difficult to justify the determination of the lords. Certainly the declaration in the case of sir Simon de Bereford, who having been accused by the king, in the fourth year of Edward III. before the lords, of participating in the treason of Roger Mortimer, that noble assembly protested, with the assent of the king in full parliament, that albeit they had taken upon them, as judges of the parliament in the presence of the king, to render judgment, yet the peers, who then were or should be in time to come, were not bound to render judgment upon others than peers, nor had power to do so; and that the said judgment thus rendered should never be drawn to example or consequence in time to come, whereby the said peers of the land might be charged to judge other than their peers, contrary to the laws of the land; certainly, I say, this declaration, even if it amounted to a

court party were not only the most numerous, but the most active and wealthy part of the nation.

[1] It was carried by 219 to 95, (17th Nov.), to address the king to remove lord Halifax from his councils and presence for ever. They resolved, nem. con., that no member of that house should accept of any office or place of profit from the crown, or any promise of one, during such time as he should continue a member; and that all offenders herein should be expelled. 30th Dec. They passed resolutions against a number of persons by name, whom they suspected to have advised the king not to pass the bill of exclusion. 7th Jan. 1680. They resolved unanimously (10th Jan.), that it is the opinion of this house, that the city of London was burnt in the year 1666 by the papists, designing thereby to introduce popery and arbitrary power in his kingdom. They were going on with more resolutions in the same spirit, when the usher of the black rod appeared to prorogue them. Parl. Hist.

statute, concerning which there has been some question,[1] was not necessarily to be interpreted as applicable to impeachments at the suit of the commons, wherein the king is no ways a party. There were several precedents in the reign of Richard II. of such impeachments for treason. There had been more than one in that of Charles I. The objection indeed was so novel, that chief-justice Scroggs, having been impeached for treason in the last parliament, though he applied to be admitted to bail, had never insisted on so decisive a plea to the jurisdiction. And if the doctrine, adopted by the lords, were to be carried to its just consequences, all impeachment of commoners must be at an end; for no distinction is taken in the above declaration as to Bereford between treason and misdemeanour. The peers had indeed lost, except during the session of parliament, their ancient privilege in cases of misdemeanour, and were subject to the verdict of a jury; but the principle was exactly the same, and the right of judging commoners upon impeachment for corruption or embezzlement, which no one called in question, was as much an exception from the ordinary rules of law as in the more rare case of high treason. It is hardly necessary to observe that the 29th section of Magna Charta, which establishes the right of trial by jury, is by its express language solely applicable to the suits of the crown.

This very dangerous and apparently unfounded theory, broached upon the occasion of Fitzharris's impeachment by the earl of Nottingham, never obtained reception; and was rather intimated than avowed in the vote of the lords, that he should be proceeded against at common law. But after the revolution, the commons having impeached sir Adam Blair and some others of high treason, a committee was appointed to search for precedents on this subject; and after full deliberation, the house of lords came to a resolution, that they would proceed on the impeachments.[2] The inadvertent position therefore of Blackstone (Commentaries, vol. iv. c. 19.), that a commoner cannot be impeached for high treason, is not only difficult to be supported upon ancient authorities, but contrary to the latest determination of the supreme tribunal.

No satisfactory elucidation of the strange libel for which Fitzharris suffered death has yet been afforded. There is much probability in the supposition that it was written at the desire of some in the court, in order to cast odium on their adversaries; a very common stratagem of unscrupulous partisans.[3] It caused an impression unfavourable to the whigs in the nation. The court made a dexterous use of that extreme credulity, which has been supposed characteristic of the English, though it belongs at least equally to every other people. They seized into their hands the very engines of delusion that had been turned against them. Those perjured witnesses, whom Shaftesbury

[1] Parl. Hist. ii. 54. Lord Hale doubted whether this were a statute. But the judges, in 1689, on being consulted by the lords, inclined to think that it was one; arguing, I suppose, from the words "in full parliament," which have been held to imply the presence and assent of the commons.

[2] Hatsell's Precedents, iv. 54., and App. 347. State Trials, viii. 236., and xii. 1218.

[3] Ralph 564. et post. State Trials, 223. 427. North's Examen, 274. Fitzharris was an Irish papist, who had evidently interviews with the king through lady Portsmouth. One Hawkins, afterwards made dean of Chichester for his pains, published a narrative of this case full of falsehoods.

had hallooed on through all the infamy of the popish plot, were now arrayed in the same court to swear treason and conspiracy against him.[1] Though he escaped by the resoluteness of his grand jury, who refused to find a bill of indictment on testimony which they professed themselves to disbelieve, and which was probably false; yet this extraordinary deviation from the usual practice did harm rather than otherwise to the general cause of his faction. The judges had taken care that the witnesses should be examined in open court, so that the jury's partiality, should they reject such positive testimony, might become glaring. Doubtless it is, in ordinary cases, the duty of a grand juror to find a bill upon the direct testimony of witnesses, where they do not contradict themselves or each other, and where their evidence is not palpably incredible or contrary to his own knowledge.[2] The oath of that inquest is forgotten, either where they render themselves, as seems too often the case, the mere conduit-pipes of accusation, putting a prisoner in jeopardy upon such slender evidence as does not call upon him for a defence; or where, as we have sometimes known in political causes, they frustrate the ends of justice by rejecting indictments which are fully substantiated by testimony. Whether the grand jury of London, in their celebrated ignoramus on the indictment preferred against Shaftesbury, had sufficient grounds for their incredulity, I will not pretend to determine.[3] There was probably no one man among them who had not implicitly swallowed the tales of the same witnesses in the trials for the plot. The nation however in general, less bigoted, or at least more honest in their bigotry, than those London citizens, was staggered by so many depositions to a traitorous conspiracy in those who had pretended an excessive loyalty to the king's person.[4] Men

[1] State Trials, viii. 759. Roger North's remark on this is worthy of him: "having sworn false, as it is manifest some did before to one purpose, it is more likely they swore true to the contrary." Examen, p. 117. And sir Robert Sawyer's observation to the same effect is also worthy of him. On College's trial, Oates, in his examination for the prisoner, said, that Tuberville had changed sides; Sawyer, as council for the crown, answered, "Dr. Oates, Mr. Tuberville has not changed sides, you have; he is still a witness for the king, you are against him." State Trials, viii. 639.

The opposite party were a little perplexed by the necessity of refuting testimony they had relied upon. In a dialogue entitled Ignoramus Vindicated, it is asked, why were Dr. Oates and others believed against the papists? and the best answer the case admits is given: "Because his and their testimony was backed by that undeniable evidence of Coleman's papers, Godfrey's murder, and a thousand other pregnant circumstances, which makes the case much different from that when people, of very suspected credit, swear the grossest improbabilities." But the same witnesses, it is urged, had lately been believed against the papists. "What! then," replies the advocate of Shaftesbury, "may not a man be very honest and credible at one time, and six months after, by necessity, subornation, malice, or twenty ways, become a notorious villain?"

[2] The true question for a grand juror to ask himself seems to be this; Is the evidence such as that, if the prisoner can prove nothing to the contrary, he ought to be convicted? However, where any considerable doubt exists as to this, as a petty juror ought to acquit, so a grand juror ought to find the indictment.

[3] Roger North, and the prerogative writers in general, speak of this inquest as a scandalous piece of perjury, enough to justify the measures soon afterwards taken against the city. But Ralph, who at this period of history, is very impartial, seems to think the jury warranted by the absurdity of the depositions. It is to be remembered that the petty juries had shown themselves liable to intimidation, and that the bench was sold to the court. In modern times, such an ignoramus could hardly ever be justified. There is strong reason to believe that the court had recourse to subornation of evidence against Shaftesbury. Ralph, 140. et post. And the witnesses were chiefly low Irishmen, in whom he was not likely to have placed confidence. As to the association found among Shaftesbury's papers, it was not signed by himself, nor, as I conceive, treasonable, only binding the associators to oppose the duke of York, in case of his coming to the crown. State Trials, viii. 786. See also 827. and 835.

[4] If we may believe James II., the populace hooted Shaftesbury when he was sent to the

unaccustomed to courts of justice are naturally prone to give credit to the positive oaths of witnesses. They were still more persuaded, when, as in the trial of College at Oxford, they saw this testimony sustained by the approbation of a judge (and that judge a decent hypocrite who gave no scandal), and confirmed by the verdict of a jury. The gross iniquity practised towards the prisoner in that trial was not so generally bruited as his conviction.[1] There is in England a remarkable confidence in our judicial proceedings, in part derived from their publicity, and partly from the indiscriminate manner in which jurors are usually summoned. It must be owned that the administration of the two last Stuarts was calculated to show how easily this confiding temper might be the dupe of an insidious ambition.

The king's declaration of the reasons that induced him to dissolve the last parliament, being a manifesto against the late majority of the house of commons, was read in all churches. The clergy scarcely waited for this pretext to take a zealous part for the crown. Every one knows their influence over the nation in any cause which they make their own. They seemed to change the war against liberty into a crusade. They re-echoed from every pulpit the strain of passive obedience, of indefeasible hereditary right, of the divine origin and patriarchal descent of monarchy. Now began again the loyal addresses, more numerous and ardent than in the last year, which overspread the pages of the London Gazette for many months. These effusions stigmatize the measures of the three last parliaments, dwelling especially on their arbitrary illegal votes against the personal liberty of the subject. Their language is of course not alike; yet amidst all the ebullitions of triumphant loyalty, it is easy in many of them to perceive a lurking distrust of the majesty to which they did homage, insinuated to the reader in the marked satisfaction with which they allude to the king's promise of calling frequent parliaments and of governing them by the laws.[2]

The whigs, meantime, so late in the heyday of their pride, lay, like the fallen angels, prostrate upon the fiery lake. The scoffs and gibes of libellers, who had trembled before the resolutions of the commons, were showered upon their heads. They had to fear, what was much worse than the insults of these vermin, the perjuries of mercenary informers suborned by their enemies to charge false conspiracies against them, and sure of countenance from the contaminated benches of justice. The court, with an artful policy, though with detestable

Tower. Macpherson, 124. Life of James, 688. This was an improvement on the *edit damnatos*. They rejoiced however much more, as he owns, at the ignoramus, p. 714.

[1] See College's case in State Trials, viii. 549.; and Hawles's remarks on it, 723. Ralph, 626. It is one of the worst pieces of judicial iniquity that we find in the whole collection. The written instructions he had given to his counsel before the trial were taken away from him, in order to learn the grounds of his defence. North and Jones, the judges before whom he was tried, afforded him no protection. But besides this, even if the witnesses had been credible, it does not appear to me that the facts amounted to treason. Roger North outdoes himself in his justification of the proceedings on this trial. Examen, p. 587. What would this man have been in power, when he writes thus in a sort of proscription twenty years after the revolution? But in justice it should be observed, that his portraits of North and Jones, Id. 512. and 517., are excellent specimens of his inimitable talent for Dutch painting.

[2] London Gazettes, 1681, passim. Ralph, 592., has spoken too strongly of their servility, as if they showed a disposition to give up altogether every right and privilege to the crown. This may be true in a very few instances, but is by no means their general tenor. They are exactly high tory addresses, and nothing more.

wickedness, secured itself against its only great danger, the suspicion of popery, by the sacrifice of Plunket, the titular archbishop of Dublin.[1] The execution of this worthy and innocent person cannot be said to have been extorted from the king in a time of great difficulty, like that of lord Stafford. He was coolly and deliberately permitted to suffer death, lest the current of loyalty, still sensitive and suspicious upon the account of religion, might be somewhat checked in its course. Yet those who heap the epithets of merciless, inhuman, sanguinary, on the whig party for the impeachment of lord Stafford, in whose guilt they fully believed, seldom mention, without the characteristic distinction of "good-natured," that sovereign who signed the warrant against Plunket, of whose innocence he was assured.[2]

The hostility of the city of London, and of several other towns, towards the court, degenerating no doubt into a factious and indecent violence, gave a pretext for the most dangerous aggression on public liberty that occurred in the present reign. The power of the democracy in that age resided chiefly in the corporations. These returned, exclusively or principally, a majority of the representatives of the commons. So long as they should be actuated by that ardent spirit of protestantism and liberty which prevailed in the middling classes, there was little prospect of obtaining a parliament that would cooperate with the Stuart scheme of government. The administration of justice was very much in the hands of their magistrates; and especially in Middlesex, where all juries are returned by the city sheriffs. It was suggested therefore by some crafty lawyers that a judgment of forfeiture obtained against the corporation of London would not only demolish that citadel of insolent rebels, but intimidate the rest of England by so striking an example. True it was, that no precedent could be found for the forfeiture of corporate privileges. But general reasoning was to serve instead of precedents; and there was a considerable analogy in the surrenders of the abbeys under

[1] State Trials, viii. 447. Chief-justice Pemberton, by whom he was tried, had strong prejudices against the papists, though well enough disposed to serve the court in some respects.

[2] The king, James says in 1679, was convinced of the falsehood of the plot, "while the seeming necessity of his affairs made this unfortunate prince, for so he may well be termed in this conjuncture, think he could not be safe but by consenting every day to the execution of those he knew in his heart to be most innocent; and as for that notion of letting the law take its course, it was such a piece of casuistry as had been fatal to the king his father," &c. 562. If this was blameable in 1679, how much more in 1681?

Temple relates, that having objected to leaving some priests to the law, as the house of commons had desired in 1679, Halifax said he would tell every one he was a papist, if he did not concur; and that the plot must be treated as if it were true, whether it was so or not; p. 339. (folio edit.) A vile maxim indeed! But as Halifax never showed any want of candour or humanity, and voted lord Stafford not guilty next year, we may doubt whether Temple has represented this quite exactly.

In reference to lord Stafford, I will here notice that lord John Russell, in a passage deserving very high praise, has shown rather too much candour in censuring his ancestor (p. 140.) on account of the support he gave (if in fact he did so, for the evidence seems weak) to the objection raised by the sheriffs, Bethell and Cornish, with respect to the mode of Stafford's execution. The king having remitted all the sentence except the beheading, these magistrates thought fit to consult the house of commons. Hume talks of Russell's seconding this "barbarous scruple," as he calls it, and imputes it to faction. But, notwithstanding the epithet, it is certain that the only question was between death by the cord and the axe; and if Stafford had been guilty, as lord Russell was convinced, of a most atrocious treason, he could not deserve to be spared the more ignominious punishment. The truth is, which seems to have escaped both these writers, that if the king could remit a part of the sentence upon a parliamentary impeachment, it might considerably affect the question whether he could not grant a pardon, which the commons had denied.

Henry VIII., if much authority could be allowed to that transaction. An information, as it is called, quo warranto, was accordingly brought into the court of king's bench against the corporation. Two acts of the common council were alleged as sufficient misdemeanours to warrant a judgment of forfeiture; one, the imposition of certain tolls on goods brought into the city markets, by an ordinance or by-law of their own; the other, their petition to the king in December, 1679, for the sitting of parliament, and its publication throughout the country. (See this petition, Somers Tracts, viii. 144.) It would be foreign to the purpose of this work to inquire whether a corporation be in any case subject to forfeiture, the affirmative of which seems to have been held by courts of justice since the revolution; or whether the exaction of tolls in their markets, in consideration of erecting stalls and standings, were within the competence of the city of London; or, if not so, whether it were such an offence as could legally incur the penalty of a total forfeiture and disfranchisement; since it was manifest that the crown made use only of this additional pretext, in order to punish the corporation for its address to the king. The language indeed of their petition had been uncourtly, and what the adherents of prerogative would call insolent; but it was at the worst rather a misdemeanour for which the persons concerned might be responsible than a breach of the trust reposed in the corporation. We are not, however, so much concerned to argue the matter of law in this question, as to remark the spirit in which the attack on this stronghold of popular liberty was conceived. The court of king's bench pronounced judgment of forfeiture against the corporation; but this judgment, at the request of the attorney-general, was only recorded; the city continued in appearance to possess its corporate franchises, but upon submission to certain regulations; namely, that no mayor, sheriff, recorder, or other chief officer, should be admitted until approved by the king; that in the event of his twice disapproving their choice of a mayor, he should himself nominate a fit person, and the same in case of sheriffs, without waiting for a second election; that the court of aldermen, with the king's permission, might remove any one of their body; that they should have a negative on the elections of common councilmen, and in case of disapproving a second choice, to have themselves the nomination. The corporation submitted, thus to purchase the continued enjoyment of its estates, at the expense of its municipal independence; yet, even in the prostrate condition of the whig party, the question to admit these regulations was carried by no great majority in the common councils.[1] The city was of course absolutely subservient to the court from this time to the revolution.

After the fall of the capital, it was not to be expected that towns less capable of defence should stand out. Informations quo warranto were brought against several corporations; and a far greater number hastened to anticipate the assault by voluntary surrenders. It seemed to be recognised as law by the judgment against London, that any irregularity or misuse of power in a corporation might incur a sentence of forfeiture; and few could boast that they were invulnerable at every

[1] State Trials, viii. 1039–1340. Ralph, 717. The majority was but 104 to 86; a division honourable to the spirit of the citizens.

point. The judges of assize in their circuits prostituted their influence and authority to forward this and every other encroachment of the crown. Jefferies, on the northern circuit in 1684, to use the language of Charles II.'s most unblushing advocate, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns." (North's Examen, 626.) They received, instead, new charters, framing the constitution of these municipalities on a more oligarchical model, and reserving to the crown the first appointment of those who were to form the governing part of the corporation. These changes were gradually brought about in the last three years of Charles's reign, and in the beginning of that of his brother.

There can be nothing so destructive to the English constitution, not even the introduction of a military force, as the exclusion of the electoral body from their franchises. The people of this country are, by our laws and constitution, bound only to obey a parliament duly chosen; and this violation of charters, in the reigns of Charles and James, appears to be the great and leading justification of that event which drove the latter from the throne. It can therefore be no matter of censure, in a moral sense, that some men of pure and patriotic virtue, mingled, it must be owned, with others of a far inferior temper, began to hold consultations as to the best means of resisting a government, which, whether to judge from these proceedings, or from the language of its partisans, was aiming without disguise at an arbitrary power. But as resistance to established authority can never be warrantable until it is expedient, the proverbial saying, that treason never prospers, because by prospering it ceases to be treason, being founded upon very good sense, we could by no means approve any schemes of insurrection that might be projected in 1682, unless we could perceive that there was a fair chance of their success. And this we are not led, by what we read of the spirit of those times, to believe. The tide ran violently in another direction; the courage of the whigs was broken; their adversaries were strong in numbers and in zeal. But from hence it is reasonable to infer that men like lord Essex and lord Russell, with so much to lose by failure, with such good sense, and such abhorrence of civil calamity, would not ultimately have resolved on the desperate issue of arms, though they might deem it prudent to form estimates of their strength, and to knit together a confederacy which absolute necessity might call into action. It is beyond doubt that the supposed conspirators had debated among themselves the subject of an insurrection, and poised the chances of civil war. Thus much the most jealous lawyer, I presume, will allow might be done, without risking the penalties of treason. They had, however, gone farther; and by concerting measures in different places as well as in Scotland, for a rising, though contingently, and without any fixed determination to carry it into effect, most probably (if the whole business had been disclosed in testimony) laid themselves open to the law, according to the construction it has frequently received. There is a considerable difficulty, after all that has been written, in stating the extent of their designs; but I think we may assume, that a wide-spreading and formidable insurrection was for several months in

agitation.[1] But the difficulties and hazards of the enterprise had already caused lord Russell and lord Essex to recede from the desperate counsels of Shaftesbury; and but for the unhappy detection of the conspiracy, and the perfidy of lord Howard, these two noble persons, whose lives were untimely lost to their country, might have survived to join the banner and support the throne of William. It is needless to observe that the minor plot, if we may use that epithet in reference to the relative dignity of the conspirators, for assassinating the king and the duke of York, had no immediate connection with the schemes of Russell, Essex, and Sidney.[2]

But it is by no means a consequence from the admission we have made, that the evidence adduced on lord Russell's trial was sufficient to justify his conviction.[3] It appears to me that lord Howard, and perhaps Rumsey, were unwilling witnesses; and that the former, as is frequently the case with those who betray their friends in order to save their own lives, divulged no more than was extracted by his own danger. The testimony of neither witness, especially Howard, was given with any degree of that precision which is exacted in modern times; and, as we now read the trial, it is not probable that a jury in later ages would have found a verdict of guilty, or would have been advised to it by the court. But, on the other hand, if lord Howard were really able to prove more than he did, which I much suspect, a better conducted examination would probably have elicited facts unfavourable to the prisoner, which at present do not appear. I do not perceive that any overt act of treason is distinctly proved against lord Russell, except his concurrence in the project of a rising at Taunton, to which Rumsey deposes. But this depending on the oath of a single witness, could not be sufficient for a conviction.

Pemberton, chief-justice of the common pleas, tried this illustrious

[1] Lady Russell's opinion was, that "it was no more than what her lord confessed, talk—and it is possible that talk going so far as to consider, if a remedy for supposed evils might be sought, how it could be formed." Life of Lord Russell, p. 266. It is not easy, however, to talk long in this manner about the *how* of treason, without incurring the penalties of it.

[2] See this business well discussed by the acute and indefatigable Ralph, p. 722., and by lord John Russell, p. 253. See also State Trials, ix. 358., et post. There appears no cause for doubting the reality of what is called the Rye-house plot. The case against Walcot, Id. 519., was pretty well proved; but his own confession completely hanged him and his friends too. His attainder was reversed after the revolution, but only on account of some technical errors, not essential to the merits of the case.

[3] State Trials, ix. 577. Lord Essex cut his throat in the Tower. He was a man of the most excellent qualities, but subject to constitutional melancholy, which overcame his fortitude; an event the more to be deplored, as there seems to have been no possibility of his being convicted. A suspicion, as is well known, obtained credit with the enemies of the court, that lord Essex was murdered; and some evidence was brought forward by the zeal of one Braddon. The late editor of the State Trials seems a little inclined to revive this report, which even Harris (Life of Charles, p. 352.) does not venture to accredit; and I am surprised to find lord John Russell observe, "It would be idle, at the present time, to pretend to give any opinion on the subject." P. 182. This I can by no means admit. We have, on the one side, some testimonies by children, who frequently invent and persist in falsehoods with no conceivable motive. But, on the other hand, we are to suppose that Charles II. and the duke of York caused a detestable murder to be perpetrated on one towards whom they had never shown any hostility, and in whose death they had no interest. Each of these princes had faults enough; but I may venture to say, that they were totally incapable of such a crime. One of the presumptive arguments of Braddon, in a pamphlet published long afterwards, is, that the king and his brother were in the Tower on the morning of lord Essex's death. If this leads to any thing, we are to believe that Charles the second, like the tyrant in a Grub-street tragedy, came to kill his prisoner with his own hands. Any man of ordinary understanding, (which seems not to have been the case with Mr. Braddon) must perceive that the circumstance tends to repel suspicion rather than the contrary. See the whole of this, including Braddon's pamphlet, in State Trials, ix. 1127

prisoner with more humanity than was usually displayed on the bench; but, aware of his precarious tenure in office, he did not venture to check the counsel for the crown, Sawyer and Jefferies, the most brutal and corrupt of mankind, permitting them to give a great body of hearsay evidence, with only the feeble and useless remark that it did not affect the prisoner.[1] Yet he checked lord Anglesea, when he offered similar evidence for the defence. In his direction to the jury, it deserves to be remarked that he by no means advanced the general proposition, which better men have held, that a conspiracy to levy war is in itself an overt act of compassing the king's death; limiting it to cases where the king's person might be put in danger, in the immediate instance, by the alleged scheme of seizing his guards.[2] His language indeed, as recorded in the printed trial, was such as might have produced a verdict of acquittal from a jury tolerably disposed towards the prisoner; but the sheriffs, North and Rich, who had been illegally thrust into office, being men, especially the former, wholly devoted to the royal prerogative, had taken care to return a panel in whom they could confide.[3]

The trial of Algernon Sidney, at which Jefferies, now raised to the post of chief-justice of the king's bench, presided, is as familiar to all my readers as that of lord Russell. (State Trials, ix. 818.) Their names have been always united in grateful veneration and sympathy. It is notorious that Sidney's conviction was obtained by a most illegal distortion of the evidence. Besides lord Howard, no living witness could be produced to the conspiracy for an insurrection; and though Jefferies permitted two others to prepossess the jury by a second-hand story, he was compelled to admit that their testimony could not directly affect the prisoner.[4] The attorney-general therefore had recourse to a paper found in his house, which was given in evidence, either as an overt act of treason by its own nature, or as connected with the alleged conspiracy; for though it was only in the latter sense that it could be admissible at all, yet Jefferies took care to insinuate, in his charge to the jury, that the doctrines it contained were treasonable in themselves, and without reference to other evidence. In regard to truth, and to that justice which cannot be denied to the worst men in their worst actions, I must observe that the common accusation against the court

[1] State Trials, 615. Sawyer told lord Russell, when he applied to have his trial put off, that he would not have given the king an hour's notice to save his life. Id. 582. Yet he could not pretend that the prisoner had any concern in the assassination plot.

[2] The act annulling lord Russell's attainder recites him to have been "wrongfully convicted by partial and unjust constructions of law." State Trials, ix. 695. Several pamphlets were published after the revolution by sir Robert Atkins and sir John Hawles against the conduct of the court in this trial, and by sir Bartholomew Shower in behalf of it. These are in the State Trials. But Holt, by laying down the principle of constructive treason in Ashton's case, established for ever the legality of Pemberton's doctrine, and indeed carried it a good deal farther.

[3] There seems little doubt, that the juries were packed through a conspiracy of the sheriffs with Burton and Graham, solicitors for the crown. State Trials, ix. 932. These two men ran away at the revolution; but Roger North vindicates their characters, and those who trust in him may think them honest.

[4] State Trials, 846. Yet in summing up the evidence, he repeated all West and Keeling had thus said at second-hand, without reminding the jury that it was not legal testimony. Id. 899. It would be said by his advocates, if any are left, that these witnesses must have been left out of the question, since there could otherwise have been no dispute about the written paper. But they were undoubtedly invented to prop up Howard's evidence, which had been so much shaken by his previous declaration that he knew of no conspiracy.

in this trial, of having admitted insufficient proof by the mere comparison of hand-writing, though alleged, not only in most of our historians but in the act of parliament reversing Sidney's attainder, does not appear to be well founded; the testimony to that fact, unless the printed trial is falsified in an extraordinary degree, being such as would be received at present.[1] We may allow also that the passages from this paper, as laid in the indictment, containing very strong assertions of the right of the people to depose an unworthy king, might by possibility, if connected by other evidence with the conspiracy itself, have been admissible as presumptuous for the jury to consider whether they had been written in furtherance of that design. But when they came to be read on the trial with their context, though only with such parts of that as the attorney-general chose to produce out of a voluminous manuscript, it was clear that they belonged to a theoretical work on government, long since perhaps written, and incapable of any bearing upon the other evidence. (See Harris's Lives, v. 347.)

The manifest iniquity of this sentence upon Algernon Sidney, as well as the high courage he displayed throughout these last scenes of his life, have inspired a sort of enthusiasm for his name, which neither what we know of his story, nor the opinion of his contemporaries seems altogether to warrant. The crown of martyrdom should be suffered perhaps to exalt every virtue, and efface every defect in patriots, as it has often done in saints. In the faithful mirror of history, Sidney may lose something of this lustre. He possessed no doubt a powerful, active, and undaunted mind, stored with extensive reading on the topics in which he delighted. But having proposed one only object for his political conduct, the establishment of a republic in England, his pride and inflexibility, though they gave a dignity to his character, rendered his views narrow and his temper unaccommodating. It was evident to every reasonable man, that a republican government, being adverse to the prepossessions of a great majority of the people, could only be brought about and maintained by the force of usurpation. Yet for this idol of his speculative hours, he was content to sacrifice the liberties of Europe, to plunge the country into civil war, and even to stand indebted to France for protection. He may justly be suspected of having been the chief promoter of the dangerous cabals with Barillon; nor could any tool of Charles's court be more sedulous in

[1] This is pointed out, perhaps for the first time, in an excellent modern law-book, Philips's Law of Evidence. Yet the act for the reversal of Sidney's attainder declares in the preamble, that "the paper, supposed to be his handwriting, was not proved by the testimony of any one witness to be written by him, but the jury was directed to believe it by comparing it with other writings of the said Algernon." State Trials, 997. This does not appear to have been the case; and though Jefferies is said to have garbled the manuscript trial before it was printed (for all the trials at this time, were published by authority, which makes them much better evidence against the judges than for them), yet he can hardly have substituted so much testimony without its attracting the notice of Atkins and Hawles, who wrote after the revolution. However, in Hayes's case, State Trials, x. 312., though the prisoner's hand-writing to a letter was proved in the usual way by persons who had seen him write, yet this letter was also shown to the jury, along with some of his acknowledged writing, for the purpose of their comparison. It is possible therefore, that the same may have been done on Sidney's trial, though the circumstance does not appear. Jefferies indeed says, "comparison of hands was allowed for good proof in Sidney's case." Id. 313. But I do not believe that the expression was used in that age so precisely as it is at present; and it is well known to lawyers that the rules of evidence on this subject have only been distinctly laid down within the memory of the present generation.

representing the aggressions of Louis XIV. in the Netherlands as indifferent to our honour and safety.

Sir Thomas Armstrong, who had fled to Holland on the detection of the plot, was given up by the States. A sentence of outlawry, which had passed against him in his absence, is equivalent, in cases of treason, to a conviction of the crime. But the law allows the space of one year, during which the party may surrender himself to take his trial. Armstrong, when brought before the court, insisted on this right, and demanded a trial. Nothing could be more evident, in point of law, than that he was entitled to it. But Jefferies, with inhuman rudeness, treated his claim as wholly unfounded, and would not even suffer counsel to be heard in his behalf. He was executed accordingly without trial. (State Trials, x. 105.) But it would be too prolix to recapitulate all the instances of brutal injustice, or of cowardly subserviency, which degraded the English lawyers of the Stuart period, and never so infamously as in these last years of Charles II. From this prostitution of the tribunals, from the intermission of parliaments, and the steps taken to render them in future mere puppets of the crown, it was plain that all constitutional securities were at least in abeyance; and those who felt themselves most obnoxious, or whose spirit was too high to live in an enslaved country, retired to Holland as an asylum in which they might wait the occasion of better prospects, or, at the worst, breathe an air of liberty.

Meanwhile the prejudice against the whig party, which had reached so great a height in 1681, was still farther enhanced by the detection of the late conspiracy. The atrocious scheme of assassination, alleged against Walcot and some others who had suffered, was blended by the arts of the court and clergy, and by the blundering credulity of the gentry, with those less heinous projects ascribed to lord Russell and his associates.[1] These projects, if true in their full extent, were indeed such as men honestly attached to the government of their country could not fail to disapprove. For this purpose, a declaration full of malicious insinuations was ordered to be read in all churches. (Ralph, p. 768. Harris's Lives, v. 321.) It was generally commented upon, we may make no question, in one of these loyal discourses, which, trampling on all truth, charity, and moderation, had no other scope than to inflame the hearers against nonconforming protestants, and to throw obloquy on the constitutional privileges of the subject.

It is not my intention to censure, in any strong sense of the word, the Anglican clergy at this time for their assertion of absolute non-resistance, so far as it was done without calumny and insolence towards those of another way of thinking, and without self-interested adulation of the ruling power. Their error was very dangerous, and had nearly proved destructive of the whole constitution; but it was one which had come down with high recommendation, and of which they could only perhaps be undeceived, as men are best undeceived of most errors, by experience that it might hurt themselves. It was the tenet of their

[1] The grand jury of Northamptonshire, in 1683, "present it as very expedient and necessary for securing the peace of this country, that all ill-affected persons may give security for the peace:" specifying a number of gentlemen of the first families, as the names of Montagu, Langham, &c. show. Somers Tracts, viii. 409.

homilies, their canons, their most distinguished divines and casuists; it had the apparent sanction of the legislature in a statute of the present reign. Many excellent men, as was shown after the revolution, who had never made use of this doctrine as an engine of faction or private interest, could not disentangle their minds from the arguments or the authority on which it rested. But by too great a number it was eagerly brought forward to serve the purposes of arbitrary power, or at best to fix the wavering protestantism of the court by professions of unimpeachable loyalty. To this motive, in fact, we may trace a good deal of the vehemence with which the non-resisting principle had been originally advanced by the church of England under the Tudors, and was continually urged under the Stuarts. If we look at the tracts and sermons published by both parties after the restoration, it will appear manifest that the Romish and Anglican churches bade, as it were, against each other for the favour of the two royal brothers. The one appealed to its acknowledged principles, while it denounced the pretensions of the holy see to release subjects from their allegiance, and the bold theories of popular government which Mariana and some other Jesuits had promulgated. The others retaliated on the first movers of the Reformation, and expatiated on the usurpation of lady Jane Grey, not to say Elizabeth, and the republicanism of Knox or Calvin, and their followers.

From the era of the exclusion-bill especially, to the death of Charles II., a number of books were published in favour of an indefeasible hereditary right of the crown, and of absolute non-resistance. These were however of two very different classes. The authors of the first, who were perhaps the more numerous, did not deny the legal limitations of monarchy. They admitted that no one was bound to concur in the execution of unlawful commands. Hence the obedience they deemed indispensable was denominated passive; an epithet, which, in modern usage, is little more than redundant, but at that time made a sensible distinction. If all men should confine themselves to this line of duty, and merely refuse to become the instruments of such unlawful commands, it was evident that no tyranny could be carried into effect. If some should be wicked enough to co-operate against the liberties of their country, it would still be the bounden obligation of Christians to submit. Of this, which may be reckoned the moderate party, the most eminent were Hickes, in a treatise called Jovian, and Sherlock, in his case of resistance to the supreme powers.[1] To this

[1] This book of Sherlock, printed in 1684, is the most able treatise on that side. His proposition is that "sovereign princes, or the supreme power in any nation, in whomsoever placed, is in all cases irresistible." He infers from the statute 13 Car. II. declaring it unlawful, under any pretence, to wage war, even defensive, against the king, that the supreme power is in him: for he who is unaccountable and irresistible is supreme. There are some, he owns, who contend that the higher powers mentioned by St. Paul meant the law, and that when princes violate the laws we may defend their legal authority against their personal usurpations. He answers this very feebly. "No law can come into the notion and definition of supreme and sovereign powers; such a prince is under the direction, but cannot possibly be said to be under the government of the law, because there is no superior power to take cognisance of his breach of it, and a law has no authority to govern where there is no power to punish." P. 114. "These men think," he says, p. 126., "that all civil authority is founded in consent, as if there were no natural lord of the world, or all mankind came free and independent into the world. This is a contradiction to what at other times they will grant, that the institution of civil power and authority is from God; and indeed if it be not, I know not how any prince can justify the taking away the life of any man, whatever crime he has been guilty of. For no

also must have belonged archbishop Sancroft, and the great body of non-juring clergy who had refused to read the declaration of indulgence under James II., and whose conduct in that respect would be utterly absurd, except on the supposition that there existed some lawful boundaries of the royal authority.

But besides these men, who kept some measures with the constitution, even while, by their slavish tenets, they laid it open to the assaults of more intrepid enemies, another and a pretty considerable class of writers did not hesitate to avow their abhorrence to all limitations upon arbitrary power. Brady went back to the primary sources of our history, and endeavoured to show that Magna Charta, as well as every other constitutional law, were but rebellious encroachments on the ancient uncontrollable imprescriptible prerogatives of the monarchy. His writings, replete with learning and acuteness, and in some respects with just remarks, though often unfair and always partial, naturally produced an effect on those who had been accustomed to value the constitution rather for its presumed antiquity, than its real excellence. But the author most in vogue with the partisans of despotism was sir Robert Filmer. He had lived before the civil war, but his posthumous writings came to light about this period. They contain an elaborate vindication of what was called the patriarchal scheme of government, which, rejecting with scorn that original contract whence human society had been supposed to spring, derives all legitimate authority from that of primogeniture, the next heir being king by divine right, and as incapable of being restrained in his sovereignty, as of being excluded from it. "As kingly power," he says, "is by the law of God, so hath it no inferior power to limit it. The father of a family governs by no other law than his own will, not by the laws and wills of his sons and servants." (P. 81.) "The direction of the law is but like the advice and direction which the king's council gives the king, which no man says is a law to the king." (P. 95.) "General laws," he observes, "made in parliament, may, upon known respects to the king, by his authority be mitigated or suspended upon causes only known to him; and by the coronation oath, he is only bound to observe good laws, of which he is the judge." (P. 98. 100.) "A man is bound to obey the king's com-

man has power of his own life, and therefore cannot give this power to another; which proves that the power of capital punishments cannot result from mere consent, but from a superior authority, which is lord of life and death." This is plausibly urged, and is not refuted in a moment. He next comes to an objection, which eventually he was compelled to admit, with some discredit to his consistency and disinterestedness. "'Is the power of victorious rebels and usurpers from God? Did Oliver Cromwell receive his power from God? then it seems it was unlawful to resist him too, or to conspire against him; then all those loyal subjects who refused to submit to him when he had got the power in his hands were rebels and traitors.' To this I answer, that the most prosperous rebel is not the higher powers, while our natural prince, to whom we owe obedience and subjection, is in being. And therefore, though such men may get the power into their hands by God's permission, yet not by God's ordinance: and he who resists them does not resist the ordinance of God, but the usurpations of men. In hereditary kingdoms, the king never dies, but the same minute that the natural person of one king dies, the crown descends upon the next of blood; and therefore he who rebelleth against the father, and murders him, continues a rebel in the reign of the son, which commences with his father's death. It is otherwise, indeed, where none can pretend a greater title to the crown than the usurper, for their possession of power seems to give a right." P. 127.

Sherlock began to preach in a very different manner as soon as James showed a disposition to set up his own church. "It is no act of loyalty," he told the house of commons, May 29. 1685, "to accommodate or compliment away our religion and its legal securities." Good Advice to the Pulpits.

mand against law, nay, in some cases, against divine laws." (P. 100.) In another treatise, entitled the Anarchy of a Mixed or Limited Monarchy, he inveighs, with no kind of reserve or exception, against the regular constitution; setting off with an assumption that the parliament of England was originally but an imitation of the States General of France, which had no further power than to present requests to the king.[1]

These treatises of Filmer obtained a very favourable reception. We find the patriarchal origin of government frequently mentioned in the publications of this time as an undoubted truth. Considered with respect to his celebrity rather than his talents, he was not, as some might imagine, too ignoble an adversary for Locke to have combated. Another person, far superior to Filmer in political eminence, undertook at the same time an unequivocal defence of absolute monarchy. This was sir George Mackenzie, the famous lord advocate of Scotland. In his Jus Regium, published in 1684, and dedicated to the university of Oxford, he maintains, that "monarchy in its nature is absolute, and consequently these pretended limitations are against the nature of monarchy." (P. 39.) "Whatever proves monarchy to be an excellent government, does by the same reason prove absolute monarchy to be the best government; for if monarchy be to be commended, because it prevents divisions, then a limited monarchy, which allows the people a share, is not to be commended, because it occasions them; if monarchy be commended because there is more expedition, secrecy, and other excellent qualities to be found in it, then absolute monarchy is to be commended above a limited one, because a limited monarch must impart his secrets to the people, and must delay the noblest designs, until malicious and factious spirits be either gained or overcome; and the same analogy of reason will hold in reflecting upon all other advantages of monarchy, the examination whereof I dare trust to every man's own bosom." (P. 46.) We can hardly, after this, avoid being astonished at the effrontery even of a Scots crown lawyer, when we read in the preface to this very treatise of Mackenzie, "Under whom can we expect to be free from arbitrary government, when we were and are afraid of it under king Charles I. and king Charles II.?"

It was at this time that the university of Oxford published their celebrated decree against pernicious books and damnable doctrines, enumerating as such above twenty propositions, which they anathematized as false, seditious, and impious. The first of these is, that all civil authority is derived originally from the people; the second, that there is a compact, tacit or express, between the king and his subjects: and others follow of the same description. They do not explicitly condemn a limited monarchy, like Filmer, but evidently adopt his scheme of primogenitary right, which is incompatible with it. Nor is there the slightest intimation that the university extended their censure to such praises of despotic power as have been quoted in the last pages.[2] This decree was publicly burned by an order of the house of lords in 1709: nor does there seem to be a single dissent in that body to a step that

[1] This treatise, subjoined to one of greater length, entitled the Freeholder's Grand Inquest, was published in 1679; but the Patriarcha not till 1685.

[2] Collier, 902.; Somers Tracts, viii. 420.

cast such a stigma on the university. But the disgrace of the offence was greater than that of the punishment.

We can frame no adequate conception of the jeopardy in which our liberties stood under the Stuarts, especially in this particular period, without attending to this spirit of servility which had been so sedulously excited. It seemed as if England was about to play the scene which Denmark had not long since exhibited, by a spontaneous surrender of its constitution. And although this loyalty were much more on the tongue than in the heart, as the next reign very amply disclosed, it served at least to deceive the court into a belief that its future steps would be almost without difficulty. It is uncertain whether Charles would have summoned another parliament. He either had the intention, or professed it in order to obtain money from France, of convoking one at Cambridge in the autumn of 1681.[1] But after the scheme of new-modelling corporations began to be tried, it was his policy to wait the effects of this regeneration. It was better still, in his judgment, to dispense with the commons altogether. The period fixed by law had elapsed nearly twelve months before his death; and we have no evidence that a new parliament was in contemplation. But Louis, on the other hand, having discontinued his annual subsidy to the king in 1684, after gaining Strasburg and Luxemburg by his connivance, or rather co-operation,[2] it would not have been easy to avoid a recurrence to the only lawful source of revenue. The king of France, it should be observed, behaved towards Charles as men usually treat the low tools by whose corruption they have obtained any end. During the whole course of their long negotiations, Louis, though never the dupe of our wretched monarch, was compelled to endure his shuffling evasions, and pay dearly for his base compliances. But when he saw himself no longer in need of them, it seems to have been in revenge that he permitted the publication of the secret treaty of 1670, and withdrew his pecuniary aid. Charles deeply resented both these marks of desertion in his ally. In addition to them he discovered the intrigues of the French ambassadors with his malcontent commons. He perceived also that by bringing home the duke of York from Scotland, and restoring him in defiance of the test act to the privy council, he had made the presumptive heir of the throne, possessed as he was of superior steadiness and attention, too near a rival to himself. These reflections appear to have depressed his mind in the later months of his life, and to have produced that remarkable private reconciliation with the duke of Monmouth, through the influence of lord Halifax, which, had he lived, would very probably have displayed one more revolution in the uncertain policy of this reign.[3] But a death, so sudden and inop-

[1] Dalrymple, app., 8.; Life of James, 691. He pretended to come into a proposal of the Dutch for an alliance with Spain and the empire against the fresh encroachments of France, and to call a parliament for that purpose, but with no sincere intention, as he assured Barillon. "Je n'ai aucune intention d'assembler le parlement; ces sont des diables qui veulent ma ruine." Dalrymple, 15.

[2] He took 100,000 livres for allowing the French to seize Luxemburg; after this he offered his arbitration, and on Spain's refusal, laid the fault on her, though already bribed to decide in favour of France. Lord Rochester was a party in all these base transactions. The acquisition of Luxemburg and Strasburg was of the utmost importance to Louis, as they gave him a predominating influence over the four Rhenish electors, through whom he hoped to procure the election of the dauphin as king of the Romans. Id. 36.

[3] Dalrymple, app., 74.; Burnet; Mazure, Hist. de la Révol. de 1688, i. 340. 372. This is

portune as to excite suspicions of poison in some most nearly connected with him, gave a more decisive character to the system of government.[1]

CHAPTER XIII.

ON THE STATE OF THE CONSTITUTION UNDER CHARLES II.

Effect of the Press—Restrictions upon it before and after the Restoration—Licensing Acts—Political Writings checked by the Judges—Instances of illegal Proclamations not numerous—Juries fined for Verdicts—Question of their Right to return a general Verdict—Habeas Corpus Act passed—Differences between the Lords and Commons—Judicial Powers of the Lords historically traced—Their Pretensions about the Time of the Restoration—Resistance made by the Commons—Dispute about their original Jurisdiction—And that in Appeals from Courts of Equity—Question of the exclusive Right of the Commons as to Money-bills—Its History—The Right extended farther—State of the Upper House under the Tudors and Stuarts—Augmentation of the Temporal Lords—State of the Commons—Increase of their Members—Question as to Rights of Election—Four different Theories as to the original Principle—Their Probability considered.—pp. 610–641.

It may seem rather an extraordinary position, after the last chapters, yet it is strictly true, that the fundamental privileges of the subject were less invaded, the prerogative swerved into fewer excesses, during the reign of Charles II. than in any former period of equal length. Thanks to the patriotic energies of Selden and Eliot, of Pym and Hampden, the constitutional boundaries of royal power had been so well established that no minister was daring enough to attempt any flagrant and general violation of them. The frequent session of parliament, and its high estimation of its own privileges, furnished a security against illegal taxation. Nothing of this sort has been imputed to the government of Charles, the first king of England, perhaps, whose reign was wholly free from such a charge. And as the nation happily escaped the attempts that were made after the restoration, to revive the star-chamber and high-commission courts, there was no means of chastising political

confirmed by, or rather confirms, the very curious notes found in the duke of Monmouth's pocket-book when he was taken after the battle of Sedgmoor, and published in the appendix to Welwood's Memoirs. Though we should rather see more external evidence of their authority, than, so far as I know, has been produced, they have great marks of it in themselves; and it is not impossible that, after the revolution, Welwood may have obtained them from the secretary of state's office.

[1] It is mentioned by Mr. Fox, as a tradition in the duke of Richmond's family, that the duchess of Portsmouth believed Charles II. to have been poisoned. This I find confirmed in a letter read on the trial of Francis Francia, indicted for treason in 1715. "The duchess of Portsmouth, who is at present here, gives a great deal of offence, as I am informed, by pretending to prove that the late king James had poisoned his brother Charles: it was not expected, that after so many years' imprisonment in France, she should come hither to revive that vulgar report, which at so critical a time cannot be for any good purpose." State Trials, xv. 948. It is almost needless to say that the suspicion was wholly unwarrantable.

delinquencies, except through the regular tribunals of justice, and through the verdict of a jury. Ill as the one were often constituted, and submissive as the other might often be found, they afforded something more of a guarantee, were it only by the publicity of their proceedings, than the dark and silent divan of courtiers and prelates who who sat in judgment under the two former kings. Though the bench was frequently subservient, the bar contained high-spirited advocates, whose firm defence of their clients the judges often reproved, but no longer affected to punish. The press, above all, was in continual service. An eagerness to peruse cheap and ephemeral tracts on all subjects of passing interest had prevailed ever since the reformation. These had been extraordinarily multiplied from the meeting of the long parliament. Some thousand pamphlets of different descriptions, written between that time and the restoration, may be found in the British Museum; and no collection can be supposed to be perfect. It would have required the summary process and stern severity of the court of star-chamber to repress this torrent, or reduce it to those bounds which a government is apt to consider as secure. But the measures taken with this view under Charles II. require to be distinctly noticed.

In the reign of Henry VIII., when the political importance of the art of printing, especially in the great question of the reformation, began to be apprehended, it was thought necessary to assume an absolute control over it, partly by the king's general prerogative, and still more by virtue of his ecclesiastical supremacy.[1] Thus it became usual to grant by letters patent the exclusive right of printing the Bible or religious books, and afterwards all others. The privilege of keeping presses was limited to the members of the stationers' company, who were bound by regulations established in the reign of Mary by the star-chamber, for the contravention of which they incurred the speedy chastisement of that vigilant tribunal. These regulations not only limited the number of presses, and of men who should be employed on them, but subjected new publications to the previous inspection of a licenser. The long parliament did not hesitate to copy this precedent of a tyranny they had overthrown; and by repeated ordinances against unlicensed printing, hindered, as far as in them lay, this great instrument of political power from serving the purposes of their adversaries. Every government, however popular in name or origin, must have some uneasiness from the great mass of the multitude, some vicissitudes of public opinion to apprehend; and experience shows that republics, especially in a revolutionary season, shrink as instinctively, and sometimes as reasonably, from an open licence of the tongue and pen, as the most jealous court. We read the noble apology of Milton for the free-

[1] It was said in 18 Car II. (1666) that "the king by the common law hath a general prerogative over the printing press; so that none ought to print a book for public use without his licence." This seems, however, to have been in the argument of counsel; but the court held that a patent to print law-books exclusively was no monopoly. Carter's Reports, 89. "Matters of state and things that concern the government," it is in another case, "were never left to any man's liberty to print that would." 1 Mod. Reps. 258. Kennet informs us, that several complaints having been made of Lilly's Grammar, the use of which had been prescribed by the royal ecclesiastical supremacy, it was thought proper in 1664, that a new public form of grammar should be drawn up and *approved in convocation*, to be enjoined by the royal authority. One was accordingly brought in by Bishop Pearson, but the matter dropped. Life of Charles II. 274.

dom of the press with admiration; but it had little influence on the parliament to whom it was addressed.

It might easily be anticipated, from the general spirit of lord Clarendon's administration, that he would not suffer the press to emancipate itself from these established shackles.[1] A bill for the regulation of printing failed in 1661, from the commons' jealousy of the peers, who had inserted a clause exempting their own houses from search. (Com. Journ., July 29. 1661.) But next year a statute was enacted, which, reciting the well-government and regulating of printers and printing-presses to be matter of public care and concernment, and that by the general licentiousness of the late times many evil-disposed persons had been encouraged to print and sell heretical and seditious books, prohibits every private person from printing any book or pamphlet, unless entered with the stationers' company, and duly licensed in the following manner: to wit, books of law by the chancellor or one of the chief-justices; of history and politics by the secretary of state; of heraldry by the kings at arms; of divinity, physic, or philosophy, by the bishops of Canterbury or London, or, if printed in either university, by its chancellor. The number of master-printers was limited to twenty: they were to give security, to affix their names, and to declare the author, if required by the licenser. The king's messengers, by warrant from a secretary of state, or the master and wardens of the stationers' company, were empowered to seize unlicensed copies wherever they should think fit to search for them, and, in case they should find any unlicensed book suspected to contain matters contrary to the church or state, they were to bring them to the two bishops before mentioned, or one of the secretaries. No books were allowed to be printed out of London, except in York and in the universities. The penalties for printing without licence were of course heavy. (14 Car. II. c. 33.) This act was only to last three years; and after being twice renewed (the last time until the conclusion of the first session of the next parliament), expired consequently in 1679; an era when the house of commons were happily in so different a temper that any attempt to revive it must have proved abortive. During its continuance, the business of licensing books was entrusted to sir Roger L'Estrange, a well-known pamphleteer of that age, and himself a most scurrilous libeller in behalf of the party he espoused, that of popery and despotic power. It is hardly necessary to remind the reader of the objections that were raised to one or two lines in Paradise Lost.

Though a previous licence ceased to be necessary, it was held by all the judges, having met for this purpose (if we believe chief-justice Scroggs) by the king's command, that all books scandalous to the government or to private persons may be seized, and the authors or those exposing them punished: and that all writers of false news, though not scandalous or seditious, are indictable on that account. (State Trials, vii. 929.) But in a subsequent trial he informs the jury that, "when by the king's command we were to give in our opinion

[1] We find an order of council, June 7. 1660, that the stationers' company do seize and deliver to the secretary of state all copies of Buchanan's History of Scotland, and De Jure Regni apud Scotos, "which are very pernicious to monarchy, and injurious to his majesty's blessed progenitors." Kennet's Register, 176. This was beginning early.

what was to be done in point of regulation of the press, we did all subscribe that to print or publish any news, books, or pamphlets of news whatsoever is illegal; that it is a manifest intent to the breach of the peace, and they may be proceeded against by law as an illegal thing.[1] Suppose now that this thing is not scandalous, what then? If there had been no reflection in this book at all, yet it is *illicitè;* and the author ought to be convicted for it. And that is for a public notice to all people, and especially printers and booksellers, that they ought to print no book or pamphlet of news whatsoever without authority." The pretended libel in this case was a periodical pamphlet, entitled the Weekly Pacquet of Advice from Rome; being rather a virulent attack on popery than serving the purpose of a newspaper. These extraordinary propositions were so far from being loosely advanced, that the court of king's bench proceeded to make an order, that the book should no longer be printed or published by any person whatsoever.[2] Such an order was evidently beyond the competence of that court, were even the prerogative of the king in council as high as its warmest advocates could strain it. It formed accordingly one article of the impeachment voted against Scroggs in the next session. (State Trials, viii. 163.) Another was for issuing general warrants (that is, warrants wherein no names are mentioned,) to seize seditious libels and apprehend their authors.[3] But this impeachment having fallen to the ground, no check was put to general warrants, at least from the secretary of state, till the famous judgment of the court of common pleas in 1764.

Those encroachments on the legislative supremacy of parliament, and on the personal rights of the subject, by means of proclamations issued from the privy council, which had rendered former princes of both the Tudor and Stuart families almost arbitrary masters of their people, had fallen with the odious tribunal by which they were enforced. The king was restored to nothing but what the law had preserved to him. Few instances appear of illegal proclamations in his reign. One of these, in 1665, required all officers and soldiers who had served in the armies of the late usurped powers to depart the cities of London and Westminster, and not to return within twenty miles of them before the November following. This seems connected with the well-grounded apprehension of a republican conspiracy. (Kennet's Charles II. 277.) Another, immediately after the fire of London, directed the mode in which houses should be rebuilt, and enjoined the lord mayor and other city magistrates to pull down whatsoever obstinate and refractory persons might presume to erect upon pretence that the ground was their own; and especially that no houses of timber should be erected

[1] This declaration of the judges is recorded in the following passage of the London Gazette, May 5. 1680:—"This day the judges made their report to his majesty in council, in pursuance of an order of this board, by which they unanimously declare that his majesty may by law prohibit the printing and publishing of all news-books and pamphlets of news whatsoever not licensed by his majesty's authority, as manifestly tending to the breach of the peace and disturbance of the kingdom. Whereupon his majesty was pleased to direct a proclamation to be prepared for the restraining the printing of news-books and pamphlets of news without leave." Accordingly such a proclamation appears in the Gazette of May 17.

[2] State Trials, vii. 1127.; viii. 184. 197. Even North seems to admit that this was a stretch of power. Examen, 564.

[3] It seems that these warrants, though usual, were known to be against the law. State Trials, vii. 949. 956. Possibly they might have been justified under the words of the licensing act, while that was in force; and having been thus introduced, were not laid aside.

for the future. (State Trials, vi. 837.) Though the public benefit of this last restriction, and of some regulations as to the rebuilding of a city which had been destroyed in great measure through the want of them was sufficiently manifest, it is impossible to justify the tone and tenor of this proclamation; and more particularly as the meeting of parliament was very near at hand. But an act having passed therein for the same purpose, the proclamation must be considered as having had little effect. Another instance, and far less capable of extenuation, is a proclamation for shutting up coffee-houses, in December, 1675. I have already mentioned this as an intended measure of lord Clarendon. Coffee-houses were all at that time subject to a licence, granted by the magistrates at quarter-sessions. But the licences having been granted for a certain time, it was justly questioned whether they could in any manner be revoked. This proclamation being of such disputable legality, the judges, according to North, were consulted, and intimating to the council that they were not agreed in opinion upon the most material questions submitted to them, it seemed advisable to recall it.[1] In this essential matter of proclamations, therefore, the administration of Charles II. is very advantageously compared with that of his father; and, considering at the same time the entire cessation of impositions of money without consent of parliament, we must admit that, however dark might be his designs, there were no such general infringements of public liberty in his reign as had continually occurred before the long parliament.

One undeniable fundamental privilege had survived the shocks of every revolution; and in the worst times, except those of the late usurpation, had been the standing record of primeval liberty—the trial by jury: whatever infringement had been made on this, in many cases of misdemeanour, by the pretended jurisdiction of the star-chamber, it was impossible, after the bold reformers of 1641 had lopped off that unsightly excrescence from the constitution, to prevent a criminal charge from passing the legal course of investigation through the inquest of a grand jury, and the verdict in open court of a petty jury. But the judges, and other ministers of justice, for the sake of their own authority or that of the crown, devised various means of subjecting juries to their own direction, by intimidation, by unfair returns of the panel, or by narrowing the boundaries of their lawful function. It is said to have been the practice in early times, as I have mentioned from sir Thomas Smith in another place, to fine juries for returning verdicts against the direction of the court, even as to matter of evidence, or to summon them before the star-chamber. It seems that instances of this kind were not very numerous after the accession of Elizabeth; yet a small number occur in our books of reports. They were probably sufficient to keep juries in much awe. But after the restoration, two judges, Hyde and Keeling, successively chief-justices of the king's bench, took on them to exercise a pretended power, which had at least been intermitted in the time of the commonwealth. The grand jury of Somerset having found a bill for manslaughter instead of murder, against the advice of the latter judge, were summoned before the court of king's

[1] Ralph, 297. North's Examen, 139. Kennet, 337. Hume of course pretends that this proclamation would have been reckoned legal in former times.

bench, and dismissed with a reprimand instead of a fine.[1] In other cases fines were set on petty juries for acquittals against the judge's direction. This unusual and dangerous inroad on so important a right attracted the notice of the house of commons; and a committee was appointed, who reported some strong resolutions against Keeling for illegal and arbitrary proceedings in his office, the last of which was, that he be brought to trial in order to condign punishment, in such manner as the house should deem expedient. But the chief-justice, having requested to be heard at the bar, so far extenuated his offence that the house, after resolving that the practice of fining or imprisoning jurors is illegal, came to a second resolution to proceed no farther against him. (Journals, 16th Oct. 1667.)

The precedents, however, which these judges endeavoured to establish, were repelled in a more decisive manner than by a resolution of the house of commons. For in two cases, where the fines thus imposed upon jurors had been estreated into the exchequer, Hale, then chief baron, with the advice of most of the judges of England, as he informs us, stayed process; and in a subsequent case it was resolved by all the judges, except one, that it was against law to fine a jury for giving a verdict contrary to the court's direction. Yet notwithstanding this very recent determination, the recorder of London, in 1670, upon the acquittal of the quakers, Penn and Mead, on an indictment for an unlawful assembly, imposed a fine of forty marks on each of the jury. (State Trials, vi. 967.) Bushell, one of their number, being committed for non-payment of this fine, sued his writ of habeas corpus from the court of common pleas; and, on the return made, that he had been committed for finding a verdict against full and manifest evidence, and against the direction of the court, chief-justice Vaughan held the ground to be insufficient, and discharged the party. In his reported judgment on this occasion, he maintains the practice of fining jurors, merely on this account, to be comparatively recent, and clearly against law. (Vaughan's Reports. State Trials, v. 999.) No later instance of it is recorded; and perhaps it can only be ascribed to the violence that still prevailed in the house of commons against nonconformists, that the recorder escaped its animadversion.

In this judgment of the chief-justice Vaughan, he was led to enter on a question much controverted in later times, the legal right of the jury to find a general verdict in criminal cases, where it determines not only the truth of the facts as deposed, but their quality of guilt or innocence; or, as it is commonly, though not perhaps quite accurately worded, to

[1] "Sir Hugh Wyndham and others of the grand jury of Somerset were at the last assizes bound over, by lord Ch. J. Keeling, to appear at the K. B. the first day of this term, to answer a misdemeanour for finding upon a bill of murder 'billa vera quoad manslaughter,' against the directions of the judge. Upon their appearance they were told by the court, being full, that it was a misdemeanour in them, for they are not to distinguish betwixt murder and manslaughter; for it is only the circumstance of malice which makes the difference, and that may be implied by the law, without any fact at all, and so it lies not in the judgment of a jury, but of the judge; that the intention of their finding indictments is, that there might be no malicious prosecution; and therefore if the matter of the indictment be not framed of malice, but is verisimilis, though it be not vera, yet it answers their oaths to present it. Twisden said he had known petty juries punished in my lord chief-justice Hyde's time, for disobeying of the judge's directions in point of law. But, because it was a mistake in their judgments rather than an obstinacy, the court discharged them without any fine or other attendance." Pasch. 19 Car. II. Keeling, Ch. J. Twisden, Wyndham, Morton, justices. Hargrave MSS. vol. 339.

judge of the law as well as the fact. It is a received maxim with us, that the judge cannot decide on questions of fact, nor the jury on those of law. Whenever the general principle, or what may be termed the major proposition of the syllogism, which every litigated case contains, can be extracted from the particular circumstances to which it is supposed to apply, the court pronounce their own determination, without reference to a jury. The province of the latter, however, though it properly extend not to any general decision of the law, is certainly not bounded, at least in modern times, to a mere estimate of the truth of testimony. The intention of the litigant parties in civil matters, of the accused in crimes, is in every case a matter of inference from the testimony or from the acknowledged facts of the case; and wherever that intention is material to the issue, is constantly left for the jury's deliberation. There are, indeed, rules in criminal proceedings which supersede this consideration; and where, as it is expressed, the law presumes the intention in determining the offence. Thus in the common instance of murder or manslaughter, the jury cannot legally determine that provocation to be sufficient, which by the settled rules of law is otherwise; nor can they, in any case, set up novel and arbitrary constructions of their own without a disregard of their duty. Unfortunately it has been sometimes the disposition of judges to claim to themselves the absolute interpretation of facts, and the exclusive right of drawing inferences from them, as it has occasionally, though not perhaps with so much danger, been the failing of juries to make their undeniable right of returning a general verdict subservient to faction or prejudice. Vaughan did not of course mean to encourage any petulance in juries that should lead them to pronounce on the law, nor does he expatiate so largely on their power as has sometimes been usual; but confines himself to a narrow, though conclusive, line of argument, that as every issue of fact must be supported by testimony, upon the truth of which the jury are exclusively to decide, they cannot be guilty of any legal misdemeanour in returning their verdict, though apparently against the direction of the court in point of law; since it cannot ever be proved that they believed the evidence upon which that direction must have rested.[1]

I have already pointed out to the reader's notice that article of Clarendon's impeachment, which charges him with having caused many persons to be imprisoned against law.[2] These were released by the duke of Buckingham's administration, which in several respects acted on a more liberal principle than any other in this reign. The practice was not however wholly discontinued. Jenkes, a citizen of London on the popular or factious side, having been committed by the king in council for a mutinous speech in Guildhall, the justices at quarter sessions refused to admit him to bail, on pretence that he had been committed by a superior court; or to try him, because he was not entered in the calendar of prisoners. The chancellor, on application for a habeas corpus, declined to issue it during the vacation; and

[1] See Hargrave's judicious observations on the province of juries. State Trials, vi. 1013.

[2] Those who were confined by warrants were forced to buy their liberty of the courtiers; "Which," says Pepys (July 7. 1667), "is a most lamentable thing that we do professedly own that we do these things, not for right and justice' sake, but only to gratify this or that person about the king."

the chief-justice of the king's bench, to whom, in the next place, the friends of Jenkes had recourse, made so many difficulties, that he lay in prison for several weeks. (State Trials, vi. 1189.) This has been commonly said to have produced the famous act of habeas corpus. But this is not truly stated. The arbitrary proceedings of lord Clarendon were what really gave rise to it. A bill to prevent the refusal of the writ of habeas corpus was brought into the house on April 10. 1668, but did not pass the committee in that session.[1] But another to the same purpose, probably more remedial, was sent up to the lords in March, 1669–70.[2] It failed of success in the upper house; but the commons continued to repeat their struggle for this important measure, and in the session of 1673–4 passed two bills, one to prevent the imprisonment of the subject in gaols beyond the seas, another to give a more expeditious use of the writ of habeas corpus in criminal matters.[3] The same or similar bills appear to have gone up to the lords in 1675. It was not till 1676, that the delay of Jenkes's habeas corpus took place. And this affair seems to have had so trifling an influence that these bills were not revived for the next two years, notwithstanding the tempests that agitated the house during that period.[4] But in the short parliament of 1679, they appear to have been consolidated into one, that having met with better success among the lords, passed into a statute, and is generally denominated the habeas corpus act. (31 Car. II. c. 2.)

It is a very common mistake, and that not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected, to suppose that this statute of Charles II. enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principles, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge or conviction, or for a civil debt. In the former case, it was always in his power to demand of the court of king's bench a writ of habeas corpus ad subjiciendum, directed to the person detaining him in custody, by which he was enjoined to bring

[1] Commons Journals. As the titles only of these bills are entered in the Journals, their purport cannot be stated with absolute certainty. They might however, I suppose, be found in some of the offices.

[2] Parl. Hist. 661. It was opposed by the court.

[3] In this session, Feb. 14., a committee was appointed to inspect the laws, and consider how the king may commit any subject by his immediate warrant, as the law now stands, and report the same to the house, and also how the law now stands touching commitments of persons by the council-table. Ralph supposes (p. 255.) that this gave rise to the habeas corpus act, which is certainly not the case. The statute 16 Car. I. c. 10. seems to recognise the legality of commitments by the king's special warrant, or by the privy council, or some, at least, of its members singly; and I do not know whether this, with long usage, is not sufficient to support the controverted authority of the secretary of state. As to the privy council, it is not doubted, I believe, that they may commit. But it has been held, even in the worst of times, that a warrant of commitment under the king's own hand, without seal, or the hand of any secretary, or officer of state, or justice, is bad. 2 Jac. II. B. R. 2 Shower, 484.

[4] In the Parl. Hist. 845., we find a debate on the petition of one Harrington to the commons in 1677, who had been committed to close custody by the council. But as his demeanour was alleged to have been disrespectful, and the right of the council to commit was not disputed, and especially as he seems to have been at liberty when the debate took place, no proceedings ensued, though the commitment had not been altogether regular. Ralph (p. 314.) comments more severely on the behaviour of the house than was necessary.

up the body of the prisoner, with the warrant of commitment, that the court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him, according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided in Magna Charta, if indeed it were not much more ancient, that the statute of Charles II. was enacted; but to cut off the abuses, by which the government's lust of power, and the servile subtlety of crown lawyers, had impaired so fundamental a privilege.

There had been some doubts whether the court of common pleas could issue this writ; and the court of exchequer seems never to have done so.[1] It was also a question, and one of more importance, as we have seen in the case of Jenkes, whether a single judge of the court of king's bench could issue it during the vacation. The statute therefore enacts that where any person, other than persons convicted or in execution upon legal process, stands committed for any crime, except for treason or felony plainly expressed in the warrant of commitment, he may during the vacation complain to the chancellor, or any of the twelve judges: who upon sight of a copy of the warrant, or an affidavit that a copy is denied, shall award a habeas corpus directed to the officer in whose custody the party shall be, commanding him to bring up the body of his prisoner within a time limited according to the distance, but in no case exceeding twenty days, who shall discharge the party from imprisonment, taking surety for his appearance in the court wherein his offence is cognisable. A gaoler refusing a copy of the warrant of commitment, or not obeying the writ, is subjected to a penalty of 100*l.*; and even the judge denying a habeas corpus, when required according to this act, is made liable to a penalty of 500*l.* at the suit of the injured party. The court of king's bench had already been accustomed to send out their writ of habeas corpus into all places of peculiar and privileged jurisdiction, where this ordinary process does not run, and even to the island of Jersey, beyond the strict limits of the kingdom of England;[2] and this power, which might admit of some question, is sanctioned by a declaratory clause of the present statute. Another section enacts, that "no subject of this realm that now is, or hereafter shall be, an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter shall be within or without the dominions of his majesty, his heirs, or successors," under penalties of the heaviest nature short of death which the law knows, and an incapacity of receiving the king's pardon. The great rank of those who were likely to offend against this part of the statute was doubtless the cause of this unusual severity.

But as it might still be practicable to evade these remedial provisions by expressing some matter of treason or felony in the warrant of

[1] The puisne judges of the common pleas granted a habeas corpus, against the opinion of chief-justice Vaughan, who denied the court to have that power. Carter's Reports, 221.

[2] The court of king's bench directed a habeas corpus to the governor of Jersey, to bring up the body of Overton, a well-known officer of the commonwealth, who had been confined there several years. Siderfin's Reports, 286. This was in 1668, after the fall of Clarendon, when a less despotic system was introduced.

commitment, the judges not being empowered to inquire into the truth of the facts contained in it, a further security against any protracted detention of an innocent man is afforded by a provision of great importance; that every person committed for treason or felony, plainly and specially expressed in the warrant, may, unless he shall be indicted in the next term, or at the next session of general gaol delivery after his commitment, be, on prayer to the court, released upon bail, unless it shall appear that the crown's witnesses could not be produced at that time; and if he shall not be indicted and tried in the second term or sessions of gaol delivery, he shall be discharged.

The remedies of the habeas corpus act are so effectual that no man can possibly endure any long imprisonment on a criminal charge, nor would any minister venture to exercise a sort of oppression so dangerous to himself. But it should be observed, that as the statute is only applicable to cases of commitment on such a charge, every other species of restraint on personal liberty is left to the ordinary remedy as it subsisted before this enactment. Thus a party detained without any warrant must sue out his habeas corpus at common law; and this is at present the more usual occurrence. But the judges of the king's bench, since the statute, have been accustomed to issue this writ during the vacation in all cases whatsoever. A sensible difficulty has, however, been sometimes felt, from their incompetency to judge of the truth of a return made to the writ. For though in cases within the statute the prisoner may always look to his legal discharge at the next sessions of gaol delivery, the same redress cannot be obtained when he is not in custody upon any criminal accusation. If the person therefore who detains any one in custody should think fit to make a return to the writ of habeas corpus, alleging matter sufficient to justify the party's restraint, yet false in fact, there would be no means, at least by this summary process, of obtaining relief. An attempt was made in 1757, after an examination of the judges by the house of lords as to the extent and efficiency of the habeas corpus at common law, to render their jurisdiction more remedial.[1] It failed however, for the time, of success; but a statute has recently been enacted (56 G. III. c. 100.), which not only extends the power of issuing the writ during the vacation, in cases not within the act of Charles II., to all the judges, but enables the judge, before whom the writ is returned, to inquire into the truth of the facts alleged therein, and in case they shall seem to him doubtful, to release the party in custody, on giving surety to appear in the court to which such judge shall belong, on some day in the ensuing term, when the court may examine by affidavit into the truth of the facts alleged in the return, and either remand or discharge the party according to their discretion. It is also declared that a writ of habeas corpus shall run to any harbour or road on the coast of England, though out of the body of any county; in order, I presume, to obviate doubts as to the effects of this remedy in a kind of illegal detention, more likely perhaps than any other to occur in modern times, on board of vessels upon the coast.

[1] See the lords' questions and answers of the judges in Parl. Hist. xv. 898.; or Bacon's Abridgment, tit. Habeas Corpus; also Wilmot's Judgments, 81. This arose out of a case of impressment, where the expeditious remedy of habeas corpus is eminently necessary.

Except a few of this description, it is very rare for a habeas corpus to be required in any case where the government can be presumed to have an interest.

The reign of Charles II. was hardly more remarkable by the vigilance of the house of commons against arbitrary prerogative than by the warfare it waged against whatever seemed an encroachment or usurpation in the other house of parliament. It has been a peculiar happiness of our constitution that such dissensions have so rarely occurred. I cannot recollect any republican government, ancient or modern, (except perhaps some of the Dutch provinces), where hereditary and democratical authority have been amalgamated so as to preserve both in effect and influence, without continual dissatisfaction and reciprocal encroachments; for though, in the most tranquil and prosperous season of the Roman state, one consul, and some magistrates of less importance, were invariably elected from the patrician families, these did not form a corporation, nor had any collective authority in the government. The history of monarchies, including of course all states where the principality is lodged in a single person, that have admitted the aristocratical and popular temperaments at the same time, bears frequent witness to the same jealous or usurping spirit. Yet monarchy is unquestionably more favourable to the co-existence of an hereditary body of nobles with a representation of the commons than any other form of commonwealth; and it is to the high prerogative of the English crown, its exclusive disposal of offices of trust which are the ordinary subjects of contention, its power of putting a stop to parliamentary disputes by a dissolution, and, above all, to the necessity which both the peers and the commons have often felt, of a mutual good understanding for the maintenance of their privileges, that we must in a great measure attribute the general harmony, or at least the absence of open schism, between the two houses of parliament. This is, however, still more owing to the happy graduation of ranks, which renders the elder and the younger sons of our nobility two links in the unsevered chain of society; the one trained in the school of popular rights, and accustomed, for a long portion of their lives, to regard the privileges of the house whereof they form a part, full as much as those of their ancestors;[1] the other falling without hereditary distinction into the class of other commoners, and mingling the sentiments natural to their birth and family affections, with those that are more congenial to the whole community. It is owing also to the wealth and dignity of those ancient families, who would be styled noble in any other country, and who give an aristocratical character to the popular part of our legislature, and to the influence which the peers themselves, through the representation of small boroughs, are enabled to exercise over the lower house.

The original constitution of England was highly aristocratical. The peers of this realm, when summoned to parliament, (and on such occa-

[1] It was ordered, 21 Jan. 1549, that the eldest son of the earl of Bedford should continue in the house after his father had succeeded to the peerage. And, 9th Feb. 1575, that his son should do so, "according to the precedent in the like case of the now earl his father." It is worthy of notice, that this determination, which, at the time, seems to have been thought doubtful, though very unreasonably (Journs. 10th Feb.), but which has had an influence which no one can fail to acknowledge, in binding together the two branches of the legislature, and in keeping

sions every peer was entitled to his writ), were the necessary counsellors and coadjutors of the king in all the functions that appertain to a government. In granting money for the public service, in changing by permanent statutes the course of the common law, they could only act in conjunction with the knights, citizens, and burgesses of the lower house of parliament. In redress of grievances, whether of so private a nature as to affect only single persons or extending to a county or hundred, whether proceeding from the injustice of public officers or of powerful individuals, whether demanding punishment as crimes against the state, or merely restitution and damages to the injured party, the lords assembled in parliament were competent, as we find in our records, to exercise the same high powers, if they were not even more extensive and remedial, as the king's ordinary council, composed of his great officers, his judges, and perhaps some peers, was wont to do in the intervals of parliament. These too, the lords and the privy council, seem to have formed, in the session, one body or great council, wherein the latter had originally right of suffrage along with the former. In this judicial and executive authority, the commons had at no time any more pretence to interfere than the council, or the lords by themselves, had to make ordinances, at least of a general and permanent nature, which should bind the subject to obedience. At the beginning of every parliament numerous petitions were presented to the lords, or to the king and lords, (since he was frequently there in person, and always presumed to be so,) complaining of civil injuries and abuse of power. These were generally indorsed by appointed receivers of petitions, and returned by them to the proper court whence relief was to be sought.[1] For an immediate inquiry and remedy seem to have been rarely granted, except in cases of an extraordinary nature, when the law was defective, or could not easily be enforced by the ordinary tribunals; the shortness of session, and multiplicity of affairs, preventing the upper house of parliament from entering so fully into these matters as the king's council had leisure to do.

It might perhaps be well questioned, notwithstanding the respectable opinion of sir M. Hale, whether the statutes directed against the prosecution of civil and criminal suits before the council are so worded as to exclude the original jurisdiction of the house of lords, though their principle is very adverse to it. But it is remarkable, that, so far as the lords themselves could allege from the rolls of parliament, one only instance occurs between 4 Hen. IV. (1403) and 43 Eliz. (1602) where their house had entered upon any petition in the nature of an original suit; though in that (1 Ed. IV. 1461) they had certainly taken on them to determine a question cognisable in the common courts of justice. For a distinction seems to have been generally made between cases where relief might be had in the courts below, as to which it is contended by sir M. Hale that the lords could not have jurisdiction, and

alive the sympathy for public and popular rights in the English nobility, (that sensus communis, which the poet thought so rare in high rank,) is first recorded, and that twice over, in behalf of a family in whom the love of constitutional freedom has become hereditary, and who may be justly said to have deserved, like the Valerii at Rome, the surname of Publicolæ.

[1] The form of appointing receivers and tryers of petitions, though intermitted during the reign of William III., was revived afterwards, and finally not discontinued without a debate in the house of lords, and a division, in 1740. Parl. Hist. xi. 1013.

those where the injured party was without remedy, either through defect of the law, or such excessive power of the aggressor as could defy the ordinary process. During the latter part at least of this long interval, the council and court of star-chamber were in all their vigour, to which the intermission of parliamentary judicature may in a great measure be ascribed. It was owing also to the longer intervals between parliaments from the time of Henry VI., extending sometimes to five or six years, which rendered the redress of private wrongs by their means inconvenient and uncertain. In 1621 and 1624, the lords, grown bold by the general disposition in favour of parliamentary rights, made orders without hesitation on private petitions of an original nature. They continued to exercise this jurisdiction in the first parliaments of Charles I.; and in one instance, that of a riot at Banbury, even assumed the power of punishing a misdemeanour unconnected with privilege. In the long parliament, it may be supposed that they did not abandon this encroachment, as it seems to have been, on the royal authority, extending their orders both to the punishment of misdemeanours and to the awarding of damages.[1]

The ultimate jurisdiction of the house of lords, either by removing into it causes commenced in the lower courts, or by writ of error complaining of a judgment given therein, seems to have been as ancient, and founded on the same principle of a paramount judicial authority delegated by the crown, as that which they exercised upon original petitions. It is to be observed that the council or star-chamber did not pretend to any direct jurisdiction of this nature; no record was ever removed thither upon assignment of errors in an inferior court. But after the first part of the fifteenth century, there was a considerable interval, during which this appellant jurisdiction of the lords seems to have gone into disuse, though probably known to be legal.[2] They began again, about 1580, to receive writs of error from the court of king's bench; though for forty years more the instances were by no means numerous. But the statute passed in 1585, constituting the court of exchequer-chamber as an intermediate tribunal of appeal between the king's bench and the parliament, recognises the jurisdiction of the latter, that is, of the house of lords, in the strongest terms. (27th Eliz. c. 8.) To this power, therefore, of determining, in the last resort, upon writs of error from the courts of common law, no objection could possibly be maintained.

The revolutionary spirit of the long parliament brought forward still higher pretensions, and obscured all the land-marks of constitutional privilege. As the commons took on themselves to direct the execution of their own orders, the lords, afraid to be jostled out of that equality to which they were now content to be reduced, asserted a similar claim at the expense of the king's prerogative. They returned to their own house on the restoration with confused notions of their high jurisdiction, rather enhanced than abated by the humiliation they had undergone.

[1] Hargrave, p. 60. The proofs are in the Lords' Journals.

[2] They were very rare after the accession of Henry V.; but one occurs in 10th Hen. VI. 1432, with which Hale's list concludes. Hargrave's Preface to Hale, p. 7. This editor justly observes, that the incomplete state of the votes and early journals renders the negative proof inconclusive; though we may be fully warranted in asserting, that from Henry V. to James I. there was very little exercise of judicial power in parliament, either civilly or criminally.

Thus, before the king's arrival, the commons having sent up for their concurrence a resolution that the persons and estates of the regicides should be seized, the upper house deemed it an encroachment on their exclusive judicature, and changed the resolution into "an order of the lords on complaint of the commons." (Lords' Journs. May 18. 1660.) In a conference on this subject between the two houses, the commons denied their lordships to possess an exclusive jurisdiction, but did not press that matter. (Coms'. Journs. May 22.) But in fact this order was rather of a legislative than judicial nature; nor could the lords pretend to any jurisdiction in cases of treason. They artfully, however, overlooked these distinctions; and made orders almost daily in the session of 1660, trenching on the executive power and that of the inferior courts. Not content with ordering the estates of all peers to be restored, free from seizure by sequestration, and with all arrears of rent, we find in their journals that they did not hesitate on petition to stay waste on the estates of private persons, and to secure the tithes of livings, from which ministers had been ejected, in the hands of the churchwardens till their title could be tried.[1] They acted, in short, as if they had a plenary authority in matters of freehold right, where any member of their own house was a party, and in every case as full an equitable jurisdiction as the court of chancery. Though in the more settled state of things which ensued, these anomalous orders do not so frequently occur, we find several assumptions of power which show a disposition to claim as much as the circumstances of any particular case should lead them to think expedient for the parties, or honourable to themselves.[2]

The lower house of parliament, which hardly reckoned itself lower in dignity, and was something more than equal in substantial power, did not look without jealousy on these pretensions. They demurred to a privilege asserted by the lords of assessing themselves in bills of direct taxation; and, having on one occasion reluctantly permitted an amendment of that nature to pass, took care to record their dissent from the principle by a special entry in the journal. (Journs. Aug. 2. and 15. 1660.) An amendment having been introduced into a bill for regulating the press, sent up by the commons in the session of 1661, which exempted the houses of peers from search for unlicensed books, it was resolved not to agree to it; and the bill dropped for that time. (Id. July 29. 1661.) Even in far more urgent circumstances, while the parliament sat at Oxford in the year of the plague, a bill to prevent the progress of infection was lost, because the lords insisted that their houses should not be subjected to the general provisions for security. (Id. Oct. 31. 1665.) These ill-judged demonstrations of a design to

[1] Lords' Journs. June. 4. 6. 14. 20. 22. et alibi sæpe. "Upon information given that some person in the late times had carried away goods from the house of the earl of Northampton, leave was given to the said earl, by his servants and agents, to make diligent and narrow search in the dwelling-houses of certain persons, and to break open any door or trunk that shall not be opened in obedience to the order." June 26. The like order was made next day for the marquis of Winchester, the earls of Derby and Newport, &c. A still more extraordinary vote was passed Aug. 16. Lord Mohun having complained of one Keigwin, and his attorney Danby, for suing him by common process in Michaelmas term, 1651, in breach of privilege of peerage, the house voted that he should have damages: nothing could be more scandalously unjust, and against the spirit of the bill of indemnity. Three presbyterian peers protested.

[2] They resolved, in the case of the earl of Pembroke, Jan. 30. 1678, that the single testimony of a commoner is not sufficient against a peer.

exempt themselves from that equal submission to the law, which is required in all well-governed states, and had ever been remarkable in our constitution, naturally raised a prejudice against the lords, both in the other house of parliament, and among the common lawyers.

This half-suppressed jealousy soon disclosed itself in the famous controversy between the two houses about the case of Skinner and the East India Company. This began by a petition of the former to the king, wherein he complained, that having gone as a merchant to the Indian seas, at a time when there was no restriction upon that trade, the East India Company's agents had plundered his property, taken away his ships, and dispossessed him of an island which he had purchased from a native prince. Conceiving that he could have no sufficient redress in the ordinary courts of justice, he besought his sovereign to enforce reparation by some other means. After several ineffectual attempts by a committee of the privy council to bring about a compromise between the parties, the king transmitted the documents to the house of lords, with a recommendation to do justice to the petitioner. They proceeded accordingly to call on the East India Company for an answer to Skinner's allegations. The company gave in what is technically called a plea to the jurisdiction, which the house over-ruled. The defendants then pleaded in bar, and contrived to delay the inquiry into the facts till the next session; when, the proceedings having been renewed, and the plea to the lords' jurisdiction again offered, and over-ruled, judgment was finally given that the East India Company should pay 5000*l.* damages to Skinner.

Meantime the company had presented a petition to the house of commons against the proceedings of the lords in this business. It was referred to a committee who had already been appointed to consider some other cases of a like nature. They made a report, which produced resolutions to this effect; that the lords, in taking cognisance of an original complaint, and that relievable in the ordinary course of law, had acted illegally, and in a manner to deprive the subject of the benefit of the law. The lords in return voted, "That the house of commons entertaining the scandalous petition of the East India Company against the lords' house of parliament, and their proceedings, examinations, and votes thereupon had and made, are a breach of the privileges of the house of peers, and contrary to the fair correspondency which ought to be between the two houses of parliament, and unexampled in former times; and that the house of peers taking cognisance of the cause of Thomas Skinner, merchant, a person highly oppressed and injured in East India by the governor and company of merchants trading thither, and over-ruling the plea of the said company, and adjudging 5000*l.* damages thereupon against the said governor and company, is agreeable to the laws of the land, and well warranted by the law and custom of parliament, and justified by many parliamentary precedents ancient and modern."

Two conferences between the houses, according to the usage of parliament, ensued, in order to reconcile this dispute. But it was too material in itself, and aggravated by too much previous jealousy, for any voluntary compromise. The precedents alleged to prove an original jurisdiction in the peers were so thinly scattered over the

records of centuries, and so contrary to the received principle of our constitution, that questions of fact are cognisable only by a jury, that their managers in the conferences seemed less to insist on the general right, than on a supposed inability of the courts of law to give adequate redress to the present plaintiff; for which the judges had furnished some pretext on a reference as to their own competence to afford relief, by an answer more narrow, no doubt, than would have been rendered at the present day. And there was really more to be said, both in reason and law, for this limited right of judicature, than for the absolute cognisance of civil suits by the lords. But the commons were not inclined to allow even of such a special exception from the principle for which they contended, and intimated that the power of affording a remedy in a defect of the ordinary tribunals could only reside in the whole body of the parliament.

The proceedings that followed were intemperate on both sides. The commons voted Skinner into custody for a breach of privilege, and resolved that whoever should be aiding in execution of the order of the lords against the East India Company should be deemed a betrayer of the liberties of the commons of England, and an infringer of the privileges of the house. The lords, in return, committed sir Samuel Barnardiston, chairman of the company, and a member of the house of commons, to prison, and imposed on him a fine of 500*l.* It became necessary for the king to stop the course of this quarrel, which was done by successive adjournments and prorogations for fifteen months. But on their meeting again in October, 1669, the commons proceeded instantly to renew the dispute. It appeared that Barnardiston, on the day of the adjournment, had been released from custody, without demand of his fine, which, by a trick rather unworthy of those who had resorted to it, was entered as paid on the records of the exchequer. This was a kind of victory on the side of the commons; but it was still more material that no steps had been taken to enforce the order of the lords against the East India Company. The latter sent down a bill concerning privilege and judicature in parliament, which the other house rejected on a second reading. They in return passed a bill vacating the proceedings against Barnardiston, which met with a like fate. In conclusion, the king recommended an erasure from the journals of all that had passed on the subject, and an entire cessation; an expedient which both houses willingly embraced, the one to secure its victory, the other to save its honour. From this time the lords have tacitly abandoned all pretensions to an original jurisdiction in civil suits.[1]

They have however been more successful in establishing a branch of their ultimate jurisdiction, which had less to be urged for it in respect of precedent, that of hearing appeals from courts of equity. It is proved by sir Matthew Hale and his editor, Mr. Hargrave, that the lords did not entertain petitions of appeal before the reign of Charles I., and not perhaps unequivocally before the long parliament.[2] They

[1] For the whole of this business, which is erased from the journals of both houses, see State Trials, v. 711. Parl. Hist. iv. 431. 443.; Hatsell's Precedents, iii. 336.; and Hargrave's Preface to Hale's Jurisdiction of the Lords, 101.

[2] Hale says, "I could never get to any precedent of greater antiquity than 3 Car. I., nay

became very common from that time, though hardly more so than original suits; and, as they bore no analogy, except at first glance, to writs of error, which come to the house of lords by the king's express commission under the great seal, could not well be defended on legal grounds. But on the other hand, it was reasonable that the vast power of the court of chancery should be subject to some control; and though a commission of review, somewhat in the nature of the court of delegates in ecclesiastical appeals, might have been and had been occasionally ordered by the crown (Hargrave's Preface, c. 31.); yet, if the ultimate jurisdiction of the peerage were convenient and salutary in cases of common law, it was difficult to assign any satisfactory reason why it should be less so in those which are technically denominated equitable.[1] Nor is it likely that the commons would have disputed this usurpation, in which the crown had acquiesced, if the lords had not received appeals against members of the other house. Three instances of this took place about the year 1675; but that of Shirley against sir John Fagg is the most celebrated, as having given rise to a conflict between the two houses, as violent as that which had occurred in the business of Skinner. It began altogether on the score of privilege. As members of the house of commons were exempted from legal process during the session, by the general privilege of parliament, they justly resented the pretension of the peers to disregard this immunity, and compel them to appear as respondents in cases of appeal. In these contentions neither party could evince its superiority but at the expense of innocent persons. It was a contempt of the one house to disobey its order, of the other to obey it. Four counsel, who had pleaded at the bar of the lords in one of the cases where a member of the other house was concerned, were taken into custody of the serjeant-at-arms by the speaker's warrant. The gentleman usher of the black rod, by warrant of the lords, empowering him to call all persons necessary to his assistance, set them at liberty. The commons apprehended them again; and to prevent another rescue, sent them to the Tower. The lords despatched their usher of the black rod to the lieutenant of the Tower, commanding him to deliver up the said persons. He replied, that they were committed by order of the commons, and he could not release them without their order; just as, if the lords were to commit any persons, he could not release them without their lordships' order. They addressed the king to remove the lieutenant; who after some hesitation, declined to comply with their desire. In this difficulty, they had recourse, instead of the warrant of the lords' speaker, to a writ of habeas corpus returnable in parliament; a proceeding not usual, but the legality of

scarce before 16 Car. I., of any such proceeding in the lords' house." C. 33.; and see Hargrave's Preface, 53.

[1] It was ordered in a petition of Robert Roberts, esq., that directions be given to the lord chancellor that he proceed to make a speedy decree in the court of chancery, according to equity and justice, notwithstanding there be not any precedent in the case. Against this lord Mohun and Lincoln severally protested; the latter very sensibly observing, that whereas it hath been the prudence and care of former parliaments to set limits and bounds to the jurisdiction of chancery, now this order of directions, which implies a command, opens a gap to set up an arbitrary power in the chancery, which is hereby countenanced by the house of lords to act, not according to the accustomed rules or former precedents of that court, but according to his own will. Lords' Journs. 29th Nov. 1664.

which seems to be now admitted. The lieutenant of the Tower, who, rather unluckily for the lords, had taken the other side, either out of conviction, or from a sense that the lower house were the stronger and more formidable, instead of obeying the writ, came to the bar of the commons for directions. They voted, as might be expected, that the writ was contrary to law and the privileges of their house. But, in this ferment of two jealous and exasperated assemblies, it was highly necessary, as on the former occasion, for the king to interpose by a prorogation for three months. This period, however, not being sufficient to allay their animosity, the house of peers took up again the appeal of Shirley in their next session. Fresh votes and orders of equal intemperance on both sides ensued, till the king by the long prorogation, from November 1675 to February 1677, put an end to the dispute. The particular appeal of Shirley was never revived; but the lords continued without objection to exercise their general jurisdiction over appeals from courts of equity.[1] The learned editor of Hale's Treatise on the Jurisdiction of the Lords expresses some degree of surprise at the commons' acquiescence in what they had treated as an usurpation. But it is evident from the whole course of proceeding that it was the breach of privilege in citing their own members to appear which excited their indignation. It was but incidentally that they observed in a conference, "that the commons cannot find, by Magna Charta, or by any other law or ancient custom of parliament, that your lordships have any jurisdiction in cases of appeal from courts of equity." They afterwards indeed resolved that there lies no appeal to the judicature of the lords in parliament from courts of equity (C. J. May 30.); and came ultimately, as their wrath increased, to a vote "That whosoever shall solicit, plead, or prosecute any appeal against any commoner of England, from any court of equity, before the house of lords, shall be deemed and taken a betrayer of the rights and liberties of the commons of England, and shall be proceeded against accordingly;"[2] which vote the lords resolved next day to be "illegal, unparliamentary, and tending to a dissolution of the government." (Lords' Journs., Nov. 20.) But this was evidently rather an act of hostility arising out of the immediate quarrel than the calm assertion of a legal principle.[3]

During the interval between these two dissensions, which the suits of Skinner and Shirley engendered, another difference had arisen, somewhat less violently conducted, but wherein both houses considered their essential privileges at stake. This concerned the long agitated question of the right of the lords to make alterations in money-bills.

[1] It was thrown out against them by the commons in their angry conferences about the business of Ashby and White, in 1704, but not with any serious intention of opposition.

[2] C. J. Nov. 19. Several divisions took place in the course of this business, and some rather close: the court endeavouring to allay the fire. The vote to take serjeant Pemberton into custody for appearing as counsel at the lords' bar was only carried by 154 to 146, on June 1.

[3] Lords' and Com. Journs. May and Nov. 1675. Parl. Hist. 721. 791. State Trials, vi. 1121. Hargrave's Preface to Hale, 135.; and Hale's Treatise. c. 33.

It may be observed, that the lords learned a little caution in this affair. An appeal of one Cottington from the court of delegates to their house was rejected, by a vote that it did not properly belong to them, Shaftesbury alone dissentient. June 17. 1678. Yet they had asserted their right to receive appeals from inferior courts, that there might be no failure of justice, in terms large enough to embrace the ecclesiastical jurisdiction. May 6. 1675. And it is said that they actually had done so in 1628. Hargrave, 53.

Though I cannot but think the importance of their exclusive privilege has been rather exaggerated by the house of commons, it deserves attention; more especially as the embers of that fire may not be so wholly extinguished as never again to show some traces of its heat.

In our earliest parliamentary records, the lords and commons, summoned in a great measure for the sake of relieving the king's necessities, appear to have made their several grants of supply without mutual communication, and the latter generally in a higher proportion than the former. These were not in the form of laws, nor did they obtain any formal assent from the king, to whom they were tendered in written indentures, entered afterwards on the roll of parliament. The latest instance of such distinct grants from the two houses, as far as I can judge from the rolls, is in the 18th year of Edward III. (Parl. Hist. ii. 148.) But in the 22nd year of that reign the commons alone granted three-fifteenths of their goods, in such a manner as to show beyond a doubt that the tax was to be levied solely upon themselves. (Parl. Hist. 200.) After this time, the lords and commons are jointly recited in the rolls to have granted them, sometimes, as it is expressed, upon deliberation had together. In one case it is said that the lords, with one assent, and afterwards the commons, granted a subsidy on exported wool. (Parl. Hist. 300. 43 Edw. III.) A change of language is observable in Richard II.'s reign, when the commons are recited to grant with the assent of the lords; and this seems to indicate, not only that in practice the vote used to originate with the commons, but that their proportion at least of the tax being far greater than that of the lords (especially in the usual impositions on wool and skins, which ostensibly fell on the exporting merchant), the grant was to be deemed mainly theirs, subject only to the assent of the other house of parliament. This is, however, so explicitly asserted in a remarkable passage on the roll of 9 Hen. IV., without any apparent denial, that it cannot be called in question by any one.[1] The language of the rolls continues to be the same in the following reigns; the commons are the granting, the lords the consenting power. It is even said by the court of king's bench, in the year-book of Edward IV., that a grant of money by the commons would be binding without assent of the lords; meaning of course as to commoners only, though the position seems a little questionable even with the limitations. I have been almost led to suspect, by considering this remarkable exclusive privilege of originating grants of money to the crown, as well as by the language of some passages in the rolls of parliament relating to them, that no part of the direct taxes, the tenths or fifteenths of goods, were assessed upon the lords temporal and spiritual, except where they are positively mentioned, which is frequently the case. But as I do not remember to have seen this any where asserted by those who have turned their attention to the antiquities of our constitution, it may possibly be an unfounded surmise, or at least only applicable to the earlier period of our parliamentary records.

These grants continued to be made as before, by the consent indeed of the houses of parliament, but not as legislative enactments. Most of the few instances where they appear among the statutes are where

[1] Rot. Parl. iii. 611. View of Middle Ages, ii 310. Orig. edition.

some condition is annexed, or some relief of grievances so interwoven with them that they make part of a new law.[1] In the reign of Henry VII. they are occasionally inserted among the statutes, though still without any enacting words. (7 H. 7. c. 11.; 12 H. 7. c. 12.) In that of Henry VIII. the form is rather more legislative, and they are said to be enacted by the authority of parliament, though the king's name is not often mentioned till about the conclusion of his reign;[2] after which a sense of the necessity of expressing his legislative authority seems to have led to its introduction in some part or other of the bill.[3] The lords and commons are sometimes both said to grant, but more frequently the latter with the former's assent, as continued to be the case through the reigns of Elizabeth and James I. In the first parliament of Charles I. the commons began to omit the name of the lords in the preamble of bills of supply, reciting the grant as if wholly their own, but in the enacting words adopted the customary form of statutes. This, though once remonstrated against by the upper house, has continued ever since to be the practice.

The originating power as to taxation was thus indubitably placed in the house of commons; nor did any controversy arise upon that ground. But they maintained also that the lords could not make any amendment whatever in bills sent up to them for imposing, directly or indirectly, a charge upon the people. There seems no proof that any difference between the two houses on this score had arisen before the restoration; and in the convention parliament, the lords made several alterations in undoubted money-bills, to which the commons did not object. But in 1661, the lords having sent down a bill for paving the streets of Westminster, to which they desired the concurrence of the commons, the latter, on reading the bill a first time, "observing that it went to lay a charge upon the people, and conceiving that it was a privilege inherent in their house that bills of that nature should be first considered there," laid it aside, and caused another to be brought in.[4] When this was sent up to the lords, they inserted a clause, to which the commons disagreed, as contrary to their privileges, because the people cannot have any tax or charge imposed upon them, but originally by the house of commons. The lords resolved this assertion of the commons to be against the inherent privileges of the house of peers; and mentioned one precedent of a similar bill in the reign of

[1] 14 E. 3. stat. 1. c. 21. This statute is remarkable for a promise of the lords not to assent in future to any charge beyond the old custom, without assent of the commons in full parliament. Stat. 2. same year; the king promised to lay on no charge but by assent of the lords and commons. 18 E. 3. stat. 2. c. 1.; the commons grant two-fifteenths of the commonalty, and two-tenths of the cities and boroughs. "Et en cas que notre signeur le roi passe la mer, de paier a mesmes les tems les quinzisme et disme del second an, et nemy en autre maniere. Issint que les deniers de ce levez soient despendus, en les besoignes a eux monstez a cest parlement, par avis des grauntz a ce assignez, et que les aides de la Trent soient mys en defense de north." This is a remarkable precedent for the usage of appropriation, which had escaped me, though I have elsewhere quoted that in 5 Rich. 2. stat. 2. c. 2. and 3. In two or three instances, we find grants of tenths and fifteenths in the statutes, without any other matter, as 14 E. 3. stat. 1. c. 20.; 27 E. 3. stat. 1. c. 4.

[2] I find only one exception, 5 H. 8. c. 17., which was in the now common form: Be it enacted by the king our sovereign lord, and by the assent, &c.

[3] In 37 H. 8. c. 25. both lords and commons are said to grant, and they pray that their grant "may be ratified and confirmed by his majesty's royal assent, so to be enacted and authorized by virtue of this present parliament as in such cases heretofore has been accustomed."

[4] Commons' Journals, 24. 29. July; Lords' Journals, 30th July.

Mary, and two in that of Elizabeth, which had begun with them. The present bill was defeated by the unwillingness of either party to recede; but for a few years after, though the point in question was still agitated, instances occur where the commons suffered amendments in what were now considered as money-bills to pass, and others where the lords receded from them rather than defeat the proposed measure. In April 1671, however, the lords having reduced the amount of an imposition on sugar, it was resolved by the other house, "That in all aids given to the king by the commons, the rate or tax ought not to be altered by the lords."[1] This brought on several conferences between the houses, wherein the limits of the exclusive privilege claimed by the commons were discussed with considerable ability, and less heat than in the disputes concerning judicature; but, as I cannot help thinking, with a decided advantage both as to precedent and constitutional analogy on the side of the peers.[2] If the commons, as in early times, had merely granted their own money, it would be reasonable that their house should have, as it claimed to have, "a fundamental right as to the matter, the measure, and the time." But that the peers, subject to the same burthens as the rest of the community, and possessing no trifling proportion of the general wealth, should have no other alternative than to refuse the necessary supplies of the revenue, or to have their exact proportion, with all qualifications and circumstances attending their grant, presented to them unalterably by the other house of parliament, was an anomaly that could hardly rest on any other ground of defence than such a series of precedents as establish a constitutional usage; while, in fact, it could not be made out that such a pretension was ever advanced by the commons before the present parliament. In the short parliament of April 1640, the lords having sent down a message, requesting the other house to give precedency in the business they were about to matter of supply, it had been highly resented; as an infringement of their privilege; and Mr. Pym was appointed to represent their complaint at a conference. Yet even then, in the fervour of that critical period, the boldest advocate of popular privileges who could have been selected was content to assert that the matter of subsidy and supply ought to begin in the house of commons. (Parliamentary History, ii. 563).

There seems to be still less pretext for the great extension given by the commons to their acknowledged privilege of originating bills of supply. The principle was well adapted to that earlier period when security against misgovernment could only be obtained by the vigilant jealousy and uncompromising firmness of the commons. They came

[1] They expressed this with strange latitude in a resolution some years after, that all aids and supplies to his majesty in parliament are *the sole gift of the commons*. Parl. Hist. 1005. As they did not mean to deny that the lords must concur in the bill, much less that they must pay their quota, this language seems indefensible.

[2] Lords' and Com. Journs. April 17th and 22nd, 1679. Parl. Hist. iv. 480. Hatsell's Precedents, iii. 109. 368. 409.

In a pamphlet by lord Anglesea, if I mistake not, entitled, "Case stated of the Jurisdiction of the House of Lords in point of Impositions," 1696, a vigorous and learned defence of the right of the lords to make alterations in money-bills, it is admitted that they cannot increase the rates; since that would be to originate a charge on the people, which they cannot do, But it is even said in the year-book, 33 H. 6., that if the commons grant tonnage for four years, and the lords reduce the terms to two years, they need not send the bill down again. This of course could not be supported in modern times.

to the grant of subsidy with real or feigned reluctance, as the stipulated price of redress of grievances. They considered the lords, generally speaking, as too intimately united with the king's ordinary council, which indeed sat with them, and had perhaps, as late as Edward III.'s time, a deliberative voice. They knew the influence or intimidating ascendancy of the peers over many of their own members. It may be doubted in fact whether the lower house shook off, absolutely and permanently, all sense of subordination, or at least deference, to the upper, till about the close of the reign of Elizabeth. But I must confess that, in applying the wise and ancient maxim, that the commons alone can empower the king to levy the people's money, to a private bill for lighting and cleansing a certain town, or cutting dikes in a fen, to local and limited assessments for local benefit, (as to which the crown has no manner of interest, nor has any thing to do with the collection,) there was more disposition shown to make encroachments than to guard against those of others. They began soon after the revolution to introduce a still more extraordinary construction of their privilege, not receiving from the house of lords any bill which imposes a pecuniary penalty on offenders, nor permitting them to alter the application of such as have been imposed below.[1]

These restrictions upon the other house of parliament, however, are now become, in their own estimation, the standing privileges of the commons. Several instances have occurred during the last century, though not, I believe, very lately, when bills, chiefly of a private nature, have been unanimously rejected, and even thrown over the table by the speaker, because they contained some provision in which the lords had trespassed upon these alleged rights.[2] They are, as may be supposed, very differently regarded in the neighbouring chamber. The lords have never acknowledged any further privilege than that of originating bills of supply. But the good sense of both parties, and of an enlightened nation, who must witness and judge of their disputes, as well as the natural desire of the government to prevent in the outset any altercation that must impede the course of its measures, have rendered this little jealousy unproductive of those animosities which it seemed so happily contrived to excite. The one house, without admitting the alleged privilege, has generally been cautious not to give a pretext for eagerly asserting it; and the other, on the trifling occasions where it has seemed, perhaps unintentionally, to be infringed, has commonly resorted to the moderate course of passing a fresh bill to the same effect, after satisfying its dignity by rejecting the first.

[1] The principles laid down by Hatsell are: 1. That in bills of supply, the lords can make no alteration but to correct verbal mistakes. 2. That in bills, not of absolute supply, yet imposing burthens, as turnpike acts, &c., the lords cannot alter the quantum of the toll, the persons to manage it, &c.; but in other clauses they may make amendments. 3. That, where a charge may indirectly be thrown on the people by a bill, the commons object to the lords making amendments. 4. That the lords cannot insert pecuniary penalties in a bill, or alter those inserted by the commons, iii. 137. He seems to boast that the lords during the last century have very faintly opposed the claim of the commons. But surely they have sometimes done so in practice, by returning a money-bill, or what the lower house call one, amended; and the commons have had recourse to the evasion of throwing out such bill, and bringing in another, with the amendments inserted in it; which does not look very triumphant.

[2] The last instance mentioned by Hatsell is in 1790, when the lords had amended a bill for regulating Warwick gaol by changing the rate to be imposed from the landowners to the occupiers, iii. 131. I am not at present aware of any subsequent case, but rather suspect that such might be found.

It may not be improper to choose the present occasion for a summary view of the constitution of both houses of parliament under the lines of Tudor and Stuart. Of their earlier history the reader may find a brief, and not, I believe, very incorrect account, in a work to which this is a kind of sequel.

The number of temporal lords summoned by writ to the parliaments of the house of Plantagenet was exceedingly various; nor was any thing more common in the fourteenth century than to omit those who had previously sat in person, and still more their descendants. They were rather less numerous for this reason, under the line of Lancaster, when the practice of summoning those who were not hereditary peers did not so much prevail as in the preceding reigns. Fifty-three names, however, appear in the parliament of 1454, the last held before the commencement of the great contest between York and Lancaster. In this troublous period of above thirty years, if the whole reign of Edward IV. is to be included, the chiefs of many powerful families lost their lives in the field or on the scaffold, and their honours perished with them by attainder. New families, adherents of the victorious party, rose in their place; and sometimes an attainder was reversed by favour; so that the peers of Edward's reign were not much fewer than the number I have mentioned. Henry VII. summoned but twenty-nine to his first parliament, including some whose attainder had never been judicially reversed; a plain act of violence, like his previous usurpation of the crown. In his subsequent parliaments the peerage was increased by fresh creations, but never much exceeded forty. The greatest number summoned by Henry VIII. was fifty-one; which continued to be nearly the average in the two next reigns, and was very little augmented by Elizabeth. James, in his thoughtless profusion of favour, made so many new creations, that eighty-two peers sat in his first parliament, and ninety-six in his latest. From a similar facility in granting so cheap a reward of service, and in some measure perhaps from the policy of counteracting a spirit of opposition to the court, which many of the lords had begun to manifest, Charles called no less than one hundred and seventeen peers to the parliament of 1628, and one hundred and nineteen to that of November 1640. Many of these honours were sold by both these princes; a disgraceful and dangerous practice, unheard of in earlier times, by which the princely peerage of England might have been gradually levelled with the herd of foreign nobility. This however, has rarely been suspected since the restoration. In the parliament of 1661, we find one hundred and thirty-nine lords summoned.

The spiritual lords, who, though forming another estate in parliament, have always been so united with the temporality that the suffrages of both upon every question are told indistinctly and numerically, composed in general, before the reformation, a majority of the upper house; though there was far more irregularity in the summonses of the mitred abbots and priors than in those of the barons. But by the surrender and dissolution of the monasteries, about thirty-six votes of the clergy on an average were withdrawn from the parliament; a loss ill compensated to them by the creation of five new bishoprics. Thus, the number of the temporal peers being continually

augmented, while that of the prelates was confined to twenty-six, the direct influence of the church on the legislature has become comparatively small; and that of the crown, which, by the pernicious system of translations and other means, is generally powerful with the episcopal bench, has, in this respect at least, undergone some diminution. It is easy to perceive from this view of the case that the destruction of the monasteries, as they then stood, was looked upon as an indispensable preliminary to the reformation; no peaceable efforts towards which could have been effectual without altering the relative proportions of the spiritual and temporal aristocracy.

The house of lords, during this period of the sixteenth and seventeenth centuries, were not supine in rendering their collective and individual rights independent of the crown. It became a fundamental principle, according indeed to ancient authority, though not strictly observed in ruder times, that every peer of full age is entitled to his writ of summons at the beginning of a parliament, and that the house will not proceed on business, if any one is denied it.[1] The privilege of voting by proxy, which was originally by special permission of the king, became absolute, though subject to such limitations as the house itself may impose. The writ of summons, which, as I have observed, had in earlier ages (if usage is to determine that which can rest on nothing but usage) given only a right of sitting in the parliament for which it issued, was held, about the end of Elizabeth's reign, by a construction founded on later usage, to convey an inheritable peerage, which was afterwards adjudged to descend upon heirs general, female as well as male; an extension which sometimes raises intricate questions of descent, and though no materially bad consequences have flowed from it, is perhaps one of the blemishes in the constitution of parliament. Doubts whether a peerage could be surrendered to the king, and whether a territorial honour, of which hardly any remain, could be alienated along with the land on which it depended, were determined in the manner most favourable to the dignity of the aristocracy. They obtained also an important privilege; first of recording their dissent in the journals of the house, and afterwards of inserting the grounds of it. Instances of the former occur not unfrequently at the period of the reformation; but the latter practice was little known before the long parliament. A right that Cato or Phocion would have prized, though it may sometimes have been frivolously or factiously exercised!

The house of commons, from the earliest records of its regular existence in the 23rd year of Edward I., consisted of seventy-four knights, or representatives from all the counties of England, except Chester, Durham, and Monmouth, and of a varying number of deputies from the cities and boroughs; sometimes in the earliest period of representation amounting to as many as two hundred and sixty; sometimes, by the negligence or partiality of the sheriffs in omitting places that had formerly returned members, to not more than two thirds of

[1] See the case of the earl of Arundel in parliament of 1626. In one instance the house took notice that a writ of summons had been issued to the earl of Mulgrave, he being under age, and addressed the king that he would be pleased to be sparing of writs of this nature for the future. 20th Oct. 1667. The king made an excuse that he did not know the earl was much under age, and would be careful for the future. 29th Oct.

that number. New boroughs, however, as being grown into importance, or from some private motive, acquired the franchise of election; and at the accession of Henry VIII. we find two hundred and twenty-four citizens and burgesses from one hundred and eleven towns, London sending four, none of which have since intermitted their privilege.

I must so far concur with those whose general principles as to the theory of parliamentary reform leave me far behind, as to profess my opinion that the change which appears to have taken place in the English government towards the end of the thirteenth century, was founded upon the maxim that all who possessed landed or moveable property ought, as freemen, to be bound by no laws, and especially by no taxation, to which they had not consented through their representatives. If we look at the constituents of a house of commons under Edward I. or Edward III., and consider the state of landed tenures and of commerce at that period, we shall perceive that, excepting women, who have generally been supposed capable of no political right but that of reigning, almost every one who contributed towards the tenths and fifteenths granted by the parliament might have exercised the franchise of voting for those who sat in it. Admitting that in corporate boroughs the franchise may have been usually vested in the freemen rather than the inhabitants, yet this distinction, so important in later ages, was of little consequence at a time when all traders, that is, all who possessed any moveable property worth assessing, belonged to the former class. I do not pretend that no one was contributory to a subsidy, who did not possess a vote; but that the far greater portion was levied on those who, as freeholders or burgesses, were reckoned in law to have been consenting to its imposition. It would be difficult, probably, to name any town of the least consideration in the fourteenth and fifteenth centuries, which did not at some time or other return members to parliament. This is so much the case, that if, in running our eyes along the map, we find any seaport, as Sunderland or Falmouth, or any inland town, as Leeds or Birmingham, which has never enjoyed the elective franchise, we may conclude at once, that it has emerged from obscurity since the reign of Henry VIII.

Though no considerable town, I believe, was intentionally left out, except by the sheriffs' partiality, it is not to be supposed that all boroughs that made returns were considerable. Several that are currently said to be decayed, were never much better than at present. Some of these were the ancient demesne of the crown; the tenants of which, not being suitors to the county courts, nor voting in the election of knights for the shire, were, still on the same principle of consent to public burthens, called upon to send their own representatives. Others received the privilege along with their charter of incorporation, in the hope that they would thrive more than proved to be the event; and possibly, even in such early times, the idea of obtaining influence in the commons through the votes of their burgesses might sometimes suggest itself.

That, amidst all this care to secure the positive right of representation, so little provision should have been made as to its relative efficiency, that the high-born and opulent gentry should have been so

vastly out-numbered by peddling traders, that the same number of two should have been deemed sufficient for the counties of York and Rutland, for Bristol and Gatton, are facts more easy to wonder at than explain; for though the total ignorance of the government as to the relative population might be perhaps a sufficient reason for not making an attempt at equalization, yet if the representation had been founded on any thing like a numerical principle, there would have been no difficulty in reducing it to the proportion furnished by the books of subsidy for each county and borough, or at least in a rude approximation towards a more rational distribution.

Henry VIII. gave a remarkable proof that no part of the kingdom, subject to the English laws and parliamentary burthens, ought to want its representation, by extending the right of election to the whole of Wales, the counties of Chester and Monmouth, and even the towns of Berwick and Calais. It might be possible to trace the reason, though I have never met with any, why the county of Durham was passed over. The attachment of those northern parts to popery seems as likely as any other. Thirty-three were thus added to the commons. Edward VI. created fourteen boroughs, and restored ten that had disused their privilege. Mary added twenty-one, Elizabeth sixty, and James twenty-seven members.[1]

These accessions to the popular chamber of parliament after the reign of Henry VIII. were by no means derived from a popular principle, such as had influenced its earlier constitution. We may account perhaps on this ground for the writs addressed to a very few towns, such as Westminster. But the design of that great influx of new members from petty boroughs, which began in the short reigns of Edward and Mary, and continued under Elizabeth, must have been to secure the authority of government, especially in the successive revolutions of religion. Five towns only in Cornwall made returns at the accession of Edward VI.; twenty-one at the death of Elizabeth. It will not be pretended that the wretched villages, which corruption and perjury still hardly keep from famine, were seats of commerce and industry in the sixteenth century. But the county of Cornwall was more immediately subject to a coercive influence, through the indefinite and oppressive jurisdiction of the stannary court. Similar motives, if we could discover the secrets of those governments, doubtless operated in most other cases. A slight difficulty seems to have been raised, in 1563, about the introduction of representatives from eight new boroughs at once by charters from the crown, but was soon waved, with the complaisance usual in those times. Many of the towns which had abandoned their privilege at a time when they were compelled to the payment of daily wages to their members during the session, were now desirous of recovering it, when that burthen had ceased and the franchise had become valuable. And the house, out of favour to popular rights, laid it down in the reign of James I. as a principle, that every town, which has at any time returned members to parliament, is entitled to a writ as a matter of course. The speaker accor-

[1] It is doubted by Mr. Merewether (*arguendo*) whether Edward and Mary created so many new boroughs as appears; because the returns under Henry VII. and Henry VIII. are lost But the motive operated more strongly in the latter reigns. West Looe Case, 89.

dingly issued writs to Hertford, Pomfret, Ilchester, and some other places, on their petition. The restorations of boroughs in this manner, down to 1641, are fifteen in number. But though the doctrine that an elective right cannot be lost by disuse, is still current in parliament, none of the very numerous boroughs which have ceased to enjoy that franchise since the days of the three first Edwards, have from the restoration downwards made an attempt at retrieving it; nor is it by any means likely that they would be successful in the application. Charles I., whose temper inspired him rather with a systematic abhorrence of parliaments than with any notion of managing them by influence, created no new boroughs. The right indeed would certainly have been disputed, however frequently exercised. In 1673 the county and city of Durham, which had strangely been unrepresented to so late an era, were raised by act of parliament to the privileges of their fellow-subjects.[1] About the same time a charter was granted to the town of Newark, enabling it to return two burgesses. It passed with some little objection at the time; but four years afterwards, after two debates, it was carried on the question, by 125 to 73, that by virtue of the charter granted to the town of Newark, it hath right to send burgesses to serve in parliament. (Journals, 26th February and 20th March.) Notwithstanding this apparent recognition of the king's prerogative to summon burgesses from a town not previously represented, no later instance of its exercise has occurred; and it would unquestionably have been resisted by the commons, not, as is vulgarly supposed, because the act of union with Scotland has limited the English members to 513, which is not the case, but upon the broad maxims of exclusive privilege in matters relating to their own body, which the house was become powerful enough to assert against the crown.

It is doubtless a problem of no inconsiderable difficulty to determine, with perfect exactness, by what class of persons the elective franchise in ancient boroughs was originally possessed; yet not perhaps so much so as the carelessness of some, and the artifices of others, have caused it to appear. The different opinions on this controverted question may be reduced to the four following theses:—1. The original right as enjoyed by boroughs represented in the parliaments of Edward I., and all of later creation, where one of a different nature has not been expressed in the charter from which they derive the privilege, was in the inhabitant householders resident in the borough, and paying scot and lot; by those words including local rates, and probably general taxes. 2. The right sprang from the tenure of certain freehold lands or burgages within the borough, and did not belong to any but such tenants. 3. It was derived from charters of incorporation, and belonged to the community or freemen of the corporate body. 4. It did not extend to the generality of freemen, but was limited to the governing part, or municipal magistracy. The actual right of election, as fixed by determinations of the house of commons before 1772, and by committees under the Grenville act since, is variously grounded upon some of these four principal rules, each of which has been subject

[1] 25 Car. 2. c. 9. A bill had passed the commons in 1624 for the same effect, but failed through the dissolution.

to subordinate modifications, which produce still more complication and irregularity.

Of these propositions, the first was laid down by a celebrated committee of the house of commons in 1624, the chairman whereof was serjeant Granville, and the members, as appears by the list in the journals, the most eminent men, in respect of legal and constitutional knowledge that were ever united in such a body. It is called by them the common-law right, and that which ought always to obtain, where prescriptive usage to the contrary cannot be shown. But it has met with very little favour from the house of commons since the restoration. The second has the authority of lord Holt in the case of Ashby and White, and of some other lawyers, who have turned their attention to the subject. It countenances what is called the right of burgage tenure; the electors in boroughs of this description being such as hold burgages, or ancient tenements, within the borough. The next theory, which attaches the primary franchise to the freemen of corporations, has, on the whole, been most received in modern times, if we look either at the decisions of the proper tribunal, or the current doctrine of lawyers. The last proposition is that of Dr. Brady, who in a treatise of boroughs, written to serve the purposes of James II., though not published till after the revolution, endeavoured to settle all elective rights on the narrowest and least popular basis. This work gained some credit, which its perspicuity and acuteness would deserve, if these were not disgraced by a perverse sophistry and suppression of truth.

It does not appear at all probable that such varying and indefinite usages, as we find in our present representation of boroughs, could have begun simultaneously, when they were first called to parliament by Edward I. and his two next descendants. There would have been what may be fairly called a common-law right, even were we to admit that some variation from it may, at the very commencement, have occurred in particular places. The earliest writ of summons directed the sheriff to make a return from every borough within his jurisdiction, without any limitation to such as had obtained charters, or any rule as to the electoral body. Charters, in fact, incorporating towns seem to have been by no means common in the thirteenth and fourteenth centuries; and though they grew more frequent afterwards, yet the first that gave expressly a right of returning members to parliament was that of Wenlock under Edward IV. These charters, it has been contended, were incorporations of the inhabitants, and gave no power either to exclude any of them, or to admit non-resident strangers, according to the practice of later ages. But, however this may be, it is an undeniable truth, that the word burgess (burgensis), long before the elective franchise, or the character of a corporation existed, meant literally the free inhabitant householder of a borough. We may, I believe, reject with confidence what I have reckoned as the third proposition; namely, that the elective franchise belonged, as of common right, to the freemen of corporations; and still more that of Brady, which few would be found to support at the present day.

There can, I should conceive, be little pretence for affecting to doubt, that the burgesses of Domesday-book, of the various early records cited by Madox and others, and of the writs of summons to

Edward's parliament, were inhabitants of tenements within the borough. But it may remain to be proved, that any were entitled to the privileges or rank of burgesses, who held less than an estate of freehold in their possessions. The burgage-tenure, of which we read in Littleton, was evidently freehold; and it is not to be assumed that the lessees of dwellings for a term of years, whose interest, in contemplation of law, is far inferior to a freehold, were looked upon as sufficiently domiciled within the borough to obtain the appellation of burgesses. It appears from Domesday, that the burgesses, long before any incorporation, held lands in common belonging to their town; they had also their guild or market-house, and were entitled in some places to tolls and customs. These permanent rights seem naturally restrained to those who possessed an absolute property in the soil. There can surely be no question as to mere tenants at will, liable to be removed from their occupation at the pleasure of their lord; and it is perhaps unnecessary to mention, that the tenancy from year to year, so usual at present, is of very recent introduction. As to estates for a term of years, even of considerable duration, they were probably not uncommon in the time of Edward I., yet far out-numbered, as I should conceive, by those of a freehold nature. Whether these lessees were contributory to the ancient local burthens of scot and lot, as well as to the tallages exacted by the king, and tenths afterwards imposed by parliament in respect of moveable estate, it seems not easy to determine; but if they were so, as appears more probable, it was not only consonant to the principle, that no freeman should be liable to taxation without the consent of his representatives, to give them a share in the general privilege of the borough, but it may be inferred with sufficient evidence from several records, that the privilege and the burthen were absolutely commensurate; men having been specially discharged from contributing to tallages, because they did not participate in the liberties of the borough, and others being expressly declared subject to those impositions, as the condition of their being admitted to the rights of burgesses.[1] It might, however, be conjectured, that a difference of usage between those boroughs, where the ancient exclusive rights of burgage tenants were maintained, and those where the equitable claim of taxable inhabitants possessing only a chattel interest received attention, might ultimately produce those very opposite species of franchise, which we find in the scot and lot boroughs and in those of burgage tenure. If the franchise, as we denominate it, passed in the thirteenth century for a burthen, subjecting the elector to bear his part in the payment of wages to the representative, the above conjecture will be equally applicable, by changing the words right and claim into liability.[2]

[1] Madox Firma, Burgi. p. 270. et post.

[2] The popular character of the elective franchise in early times has been maintained by two writers of considerable research and ability; Mr. Luders, Reports of Election Cases, and Mr. Merewether, in his Sketch of the History of Boroughs and Report of the West Looe Case. The former writer has the following observations, vol. i. p. 99.:—"The ancient history of boroughs does not confirm the opinion above referred to, which lord chief-justice Holt delivered in the case of Ashby v. White; viz. that inhabitants not incorporated cannot send members to parliament but by prescription. For there is good reason to believe, that the elections in boroughs were in the beginning of representation popular; yet in the reign of Edward I. there were not perhaps thirty corporations in the kingdom. Who then elected the members

It was according to the natural course of things, that the mayors or bailiffs, as returning officers, with some of the principal burgesses (especially where incorporating charters had given them a pre-eminence), would take to themselves the advantage of serving a courtier or neighbouring gentleman, by returning him to parliament, and virtually exclude the general class of electors, indifferent to public matters, and without a suspicion that their individual suffrages could ever be worth purchase. It is certain that a seat in the commons was an object of ambition in the time of Edward IV., and I have little doubt that it was so in many instances much sooner. But there existed not the means of that splendid corruption which has emulated the Crassi and Luculli of Rome. Even so late as 1571, Thomas Long, a member for Westbury, confessed that he had given four pounds to the mayor and another person for his return. The elections were thus generally managed, not often perhaps by absolute bribery, but through the influence of the government and of the neighbouring aristocracy; and while the freemen of the corporation, or resident householders, were frequently permitted, for the sake of form, to concur in the election, there were many places where the smaller part of the municipal body, by whatever names distinguished, acquired a sort of prescriptive right through an usage, of which it was too late for them to show the commencement.[1]

It was perceived, however, by the assertors of the popular cause under James I., that, by this narrowing of the electoral franchise, many

of boroughs not incorporated? Plainly, the inhabitants or burghers [according to their tenure or situation]; for at that time every inhabitant of a borough was called a burgess; and Hobart refers to this usage in support of his opinion in the case of Dungannon. The manner in which they exercised this right was the same as that in which the inhabitants of a town, at this day, hold a right of common, or other such privilege, which many possess who are not incorporated." The words in brackets, which are not in the printed edition, are inserted by the author himself in a copy bequeathed to the Inner Temple library. The remainder of Mr. Luders's note, though too long for this place, is very good, and successfully repels the *corporate* theory.

[1] The following passage from Vowell's treatise, on the order of the parliament, published in 1571, and reprinted in Holingshed's Chronicles of Ireland, (vi. 345.) seems to indicate, that, at least in practice, the election was in the principal or governing body of the corporation. "The sheriff of every county, having received his writ, ought, forthwith, to send his precepts and summons to the mayors, bailiffs, and head officers of every city, town corporate, borough, and such places as have been accustomed to send burgesses within his county, that they do choose and elect among themselves two citizens for every city, and two burgesses for every borough, according to their old custom and usage. And these head officers ought then to assemble themselves, *and the aldermen and common council of every city or town;* and to make choice among themselves of two able and sufficient men of every city or town, to serve for and in the said parliament."

Now, if these expressions are accurate, it certainly seems that, at this period, the great body of freemen or inhabitants were not partakers in the exercise of their franchise. And the following passage, if the reader will turn to it, wherein Vowell adverts to the form of a county election, is so differently worded in respect to the election by the freeholders at large that we may fairly put a literal construction upon the former. In point of fact, I have little doubt that elections in boroughs were for the most part very closely managed in the sixteenth century, and probably much earlier. This, however, will not by any means decide the question of right. For we know that in the reigns of Henry IV. and Henry V. returns for the great county of York were made by the proxies of a few peers and a few knights; and there is a still more anomalous case in the reign of Elizabeth, when a lady Packington sealed the indenture for the county of Worcester. Carew's Hist. of Elections, part ii. p. 282. But no one would pretend that the right of election was in these persons, or supposed by any human being to be so.

The difficulty to be got over by those who defend the modern decision of committees is this. We know that in the reign of Edward I. more than one hundred boroughs made returns to the writ. If most of these were not incorporated, nor had any aldermen, capital burgesses, and so forth, by whom were the elections made? Surely by the freeholders, or other the inhabitants. And if they were so made in the reign of Edward I., how has the franchise been restrained afterwards?

boroughs were subjected to the influence of the privy council, which, by restoring the householders to their legitimate rights, would strengthen the interests of the country. Hence lord Coke lays it down in his fourth institute, that "if the king newly incorporate an ancient borough, which before sent burgesses to parliament, and granteth that certain selected burgesses shall make election of the burgesses of parliament, where all the burgesses elected before, this charter taketh not away the election of the other burgesses. And so, if a city or borough hath power to make ordinances, they cannot make an ordinance that a less number shall elect burgesses for the parliament than made the election before; for free elections of members of the high court of parliament are pro bono publico, and not to be compared to other cases of election of mayors, bailiffs, etc., of corporations."[1] He adds, however, "by original grant or by custom, a selected number of burgesses may elect and bind the residue." This restriction was admitted by the committee over which Glanville presided in 1624. (Glanville's case of Bletchingly, p. 33.) But both they and lord Coke believed the representation of boroughs to be from a date before what is called legal memory, that is, the accession of Richard I. It is not easy to reconcile their principle, that an elective right once subsisting could not be limited by any thing short of immemorial prescription, with some of their own determinations, and still less with those which have subsequently occurred, in favour of a restrained right of suffrage. There seems, on the whole, great reason to be of opinion, that where a borough is so ancient as to have sent members to parliament before any charter of incorporation proved, or reasonably presumed to have been granted, or where the word burgensis is used without any thing to restrain its meaning in an ancient charter, the right of election ought to have been acknowledged either in the resident householders paying general and local taxes, or in such of them as possessed an estate of freehold within the borough. And whatever may have been the primary meaning of the word burgess, it appears consonant to the popular spirit of the English constitution that, after the possessors of leasehold interests became so numerous and opulent as to bear a very large share in the public burthens, they should have enjoyed commensurate privileges; and that the resolution of Mr. Glanville's committee in favour of what they called the common-law right should have been far more uniformly received, and more consistently acted upon, not merely as agreeable to modern theories of liberty, from which some have intimated it to have sprung, but as grounded on the primitive spirit and intention of the law of parliament.

In the reign of Charles II. the house of commons seems to have become less favourable to this species of franchise. But after the revolution, when the struggle of parties was renewed every three years throughout the kingdom, the right of election came more continually into question, and was treated with the grossest partiality by the house, as subordinate to the main interests of the rival factions. Contrary determinations for the sole purpose of serving these interests, as each grew in its turn more powerful, frequently occurred; and at this time the ancient right of resident householders seems to have grown into

[1] 4 Inst. 48. Glanville, p. 53. 66. That no private agreement, or by-law of the borough, can restrain the right of election, is laid down in the same book, p. 17.

disrepute, and given way to that of corporations, sometimes at large, sometimes only in a limited and very small number. A slight check was imposed on this scandalous and systematic injustice by the act 2 G. II. c. 2., which renders the last determination of the house of commons conclusive as to the right of election.[1] But this enactment confirmed many decisions that cannot be reconciled with any sensible rule. The same iniquity continued to prevail in cases beyond its pale; the fall of sir Robert Walpole from power was reckoned to be settled, when there appeared a small majority against him on the right of election at Chippenham, a question not very logically connected with the merits of his administration; and the house would to this day have gone on trampling on the franchises of their constituents, if a statute had not been passed through the authority and eloquence of Mr. Grenville, which has justly been known by his name. I shall not enumerate the particular provisions of this excellent law, which, in point of time, does not fall within the period of my present work; it is generally acknowledged that, by transferring the judicature in all cases of controverted elections, from the house to a sworn committee of fifteen members, the reproach of partiality has been a good deal lightened, though not perhaps effaced.

CHAPTER XIV.

THE REIGN OF JAMES II.

Designs of the King—Parliament of 1685*—King's Intention to repeal the Test Act—Deceived as to the Dispositions of his Subjects—Prorogation of Parliament—Dispensing Power confirmed by the Judges—Ecclesiastical Commission—King's Scheme of establishing Popery—Dismissal of Lord Rochester—Prince of Orange alarmed—Plan of setting the Princess aside—Rejected by the King—Overtures of the Malecontents to Prince of Orange—Declaration for Liberty of Conscience—Addresses in Favour of it—New-modelling of the Corporations—Affair of Magdalen College—Infatuation of the King—His Coldness towards Louis—Invitation signed to the Prince of Orange—Birth of Prince of Wales—Justice and Necessity of the Revolution—Favourable Circumstances attending it—Its salutary Consequences—Proceedings of the Convention—Ended by the Elevation of William and Mary to the Throne.*—pp. 641–676.

THE great question that has been brought forward at the end of the last chapter, concerning the right and usage of election in boroughs, was perhaps of less practical importance in the reign of Charles the Second than we might at first imagine, or than it might become in the

[1] This clause in an act imposing severe penalties on bribery, was inserted by the house of lords with the insidious design of causing the rejection of the whole bill; if the commons, as might be expected, should resent such an interference with their privileges. The ministry accordingly endeavoured to excite this sentiment; but those who had introduced the bill very wisely thought it better to sacrifice a point of dignity rather than lose so important a statute. It was, however, only carried by two voices to agree with the amendment. Parliamentary History viii. 754.

present age. Whoever might be the legal electors, it is undoubted that a great preponderance was virtually lodged in the select body of corporations. It was the knowledge of this that produced the corporation act soon after the restoration, to exclude the presbyterians, and the more violent measures of quo warranto at the end of Charles's reign. If by placing creatures of the court in municipal offices, or by intimidating the former corporators through apprehensions of forfeiting their common property and lucrative privileges, what was called a loyal parliament could be procured, the business of government, both as to supply and enactment or repeal of laws, would be carried on far more smoothly, and with less scandal than by their entire disuse. Few of those who assumed the name of tories were prepared to sacrifice the ancient fundamental forms of the constitution. They thought it equally necessary that a parliament should exist, and that it should have no will of its own, or none at least, except for the preservation of that ascendancy of the established religion which even their loyalty would not consent to surrender.

It is not easy to determine whether James II. had resolved to complete his schemes of arbitrary government by setting aside even the nominal concurrence of the two houses of parliament in legislative enactments, and especially in levying money on his subjects. Lord Halifax had given him much offence towards the close of the late reign, and was considered from thenceforth as a man unfit to be employed, because in the cabinet, on a question whether the people of New England should be ruled in future by an assembly or by the absolute pleasure of the crown, he had spoken very freely against unlimited monarchy. (Fox, Appendix, p. 8.). James, indeed, could hardly avoid perceiving that the constant acquiescence of an English house of commons in the measures proposed to it, a respectful abstinence from all intermeddling with the administration of affairs, could never be relied upon or obtained at all, without much of that dexterous management and influence which he thought it both unworthy and impolitic to exert. It seems clearly that he had determined on trying their obedience merely as an experiment, and by no means to put his authority in any manner within their control. Hence he took the bold step of issuing a proclamation for the payment of customs, which by law expired at the late king's death;[1] and Barillon mentions several times, that he

[1] "The legal method," says Burnet, "was to have made entries, and to have taken bonds for those duties to be paid when the parliament should meet and renew the grant." Mr. Onslow remarks on this, that he should have said, the least illegal and the only justifiable method. To which the Oxford editor subjoins that it was the proposal of lord-keeper North, while the other, which was adopted, was suggested by Jefferies. This is a mistake. North's proposal was to collect the duties under the proclamation, but to keep them apart from the other revenues in the exchequer until the next session of parliament. There was surely little difference in point of illegality between this and the course adopted. It was alleged, that the merchants, who had paid duty, would be injured by a temporary importation duty free; and certainly it was inconvenient to make the revenue dependent on such a contingency as the demise of the crown. But this neither justifies the proclamation, nor the disgraceful acquiescence of the next parliament in it.

The king was thanked in several addresses for directing the customs to be levied, particularly in one from the benchers or barristers of the Middle Temple. London Gazette, March 11. This was drawn by sir Bartholomew Shower, and presented by sir Humphrey Mackworth. Life of James, vol. ii. p. 17. The former was active as a lawyer in all the worst measures of these two reigns. Yet, after the revolution, they both became tory patriots, and jealous assertors of freedom against the government of William III. Barillon, however, takes

was resolved to continue in the possession of the revenue, whether the parliament should grant it or no. He was equally decided not to accept it for a limited time. This, as his principal ministers told the ambassador, would be to establish the necessity of convoking parliament from time to time, and thus to change the form of government by rendering the king dependent upon it; rather than which it would be better to come at once to the extremity of a dissolution, and maintain the possession of the late king's revenues by open force.[1] But the extraordinary conduct of this house of commons, so unlike any that had met in England for the last century, rendered any exertion of violence on this score quite unnecessary.

The behaviour of that unhonoured parliament, which held its two short sessions in 1685, though in a great measure owing to the fickleness of the public mind and rapid ascendancy of tory principles during the late years, as well as to a knowledge of the king's severe and vindictive temper, seems to confirm the assertion strongly made at the time within its walls, that many of the members had been unduly returned. (Fox, App. p. 93. Lonsdale, p. 5.) The notorious facts, indeed, as to the forfeiture of corporations throughout the kingdom, and their re-grant under such restrictions as might serve the purpose of the crown, stand in need of no confirmation. Those who look at the debates and votes of this assembly, their large grant of a permanent revenue to the annual amount of two millions, rendering a frugal prince, in time of peace, entirely out of all dependence on his people; their timid departure from a resolution taken to address the king on the only matter for which they were really solicitous, the enforcement of the penal laws, on a suggestion of his displeasure;[2] their bill entitled, for the preservation of his majesty's person, full of dangerous innovations in the law of treason, especially one most unconstitutional clause, that any one moving in either house of parliament to change the

notice, that this illegal continuance of the revenue produced much discontent. Fox's App. 39. And Rochester told him that North and Halifax would have urged the king to call a parliament, in order to settle the revenue on a lawful basis if that resolution had not been taken by himself. Id p. 20. The king thought it necessary to apologize to Barillon for convoking parliament. Id. p. 18. Dalrymple, p. 100.

[1] Dalrymple, p. 142. The king alludes to this possibility of a limited grant with much resentment and threatening, in his speech on opening the session.

[2] For this curious piece of parliamentary inconsistency, see Reresby's Mem. p. 113.; and Barillon in the App. to Fox, p. 95. "Il s'est passé avant hier une chose de grande conséquence dans la chambre basse: il fut proposé la matin que la chambre se mettoit en comité l'après diner pour considérer la harangue du roy sur l'affaire de la religion, et savoir ce qui devoit être entendu par le terme *de religion protestante*. La résolution fut prise unanimement, et sans contradiction, de faire une adresse au roy pour le prier de faire une proclamation pour l'exécution des loix contre tous les non-conformistes généralement, c'est-à-dire, contre tous ceux qui ne sont pas ouvertement de l'église Anglicane; cela enferme les presbitériens et tous les sectaires, aussi bien que les catholiques Romains. La malice de cette résolution fut aussitôt reconnu du roy d'Angleterre, et de ses ministres; les principaux de la chambre basse furent mandés, et ceux que sa majesté Britannique croit être dans ses intérêts: il leur fit une réprimande sévère de s'être laissés séduire et entrainer à une résolution si dangereuse et si peu admissible. Il leur déclara que, si l'on persistoit à lui faire une pareille adresse, il répondroit à la chambre basse en termes si décisifs et si fermes qu'on ne retourneroit pas à lui faire une pareille adresse. La manière dont sa majesté Britannique s'explique produisit son effet hier matin; et le chambre basse rejet a tout d'une voix ce que avoit été résolu en comité le jour auparavant."

The only man who behaved with distinguished spirit in this wretched parliament was one in whose political life there is little else to praise, sir Edward Seymour. He opposed the grant of the revenues for life, and spoke strongly against the illegal practices in the elections. Fox, 90. 93.

descent of the crown should incur the penalties of that offence;[1] their supply of 700,000*l.*, after the suppression of Monmouth's rebellion, for the support of a standing army;[2] will be inclined to believe that, had James been as zealous for the church of England as his father, he would have succeeded in establishing a power so nearly despotic, that neither the privileges of parliament, nor much less those of private men, would have stood in his way. The prejudice which the two last Stuarts had acquired in favour of the Roman religion, so often deplored by thoughtless or insidious writers as one of the worst consequences of their father's ill fortune, is to be accounted rather among the most signal links in the chain of causes through which a gracious Providence has favoured the consolidation of our liberties and welfare. Nothing less than a motive more universally operating than the interests of civil freedom would have stayed the compliant spirit of this unworthy parliament, or rallied, for a time at least, the supporters of indefinite prerogative under a banner they abhorred. We know that the king's intention was to obtain the repeal of the habeas corpus act, a law which he reckoned as destructive of monarchy as the test was of the catholic religion.[3] And I see no reason to suppose that he would have failed of this, had he not given alarm to his high-church parliament, by a premature manifestation of his design to fill the civil and military employments with the professors of his own mode of faith.

It has been doubted by Mr. Fox whether James had, in this part of his reign, conceived the projects commonly imputed to him, of overthrowing, or injuring by any direct acts of power, the protestant establishment of this kingdom. Neither the copious extracts from Barillon's correspondence with his own court, published by sir John Dalrymple and himself, nor the king's own memoirs, seem, in his opinion, to warrant a conclusion that any thing farther was intended than to emancipate the Roman catholics from the severe restrictions of the penal laws, securing the public exercise of their worship from molestation, and to replace them upon an equality as to civil offices, by abrogating the test act of the late reign.[4] We find nevertheless a

[1] Fox, App., p. 156. "Provided always, and be it further enacted, that if any peer of this realm, or member of the house of commons, shall move or propose in either house of parliament the disherison of the rightful and true heir of the crown, or to alter or change the descent or succession of the crown in the right line; such offence shall be deemed and adjudged high treason, and every person being indicted and convicted of such treason, shall be proceeded against, and shall suffer and forfeit as in other cases of high treason mentioned in this act."

See what Lord Londsdale says, p. 8. of this bill, which he, among others, contrived to weaken by provisoes, so that it was given up.

[2] Parl. Hist. 1372. The king's speech had evidently shown that the supply was only demanded for this purpose. The speaker, on presenting the bill for settling the revenue in the former session, claimed it as a merit that they had not inserted any appropriating clauses. Parl. History 1359.

[3] Reresby, p. 110. Barillon, in Fox's App. p. 93. 127., &c. Le feu roi d'Angleterre et celui-ci m'ont souvent dit, qu'un gouvernement ne peut subsister avec une telle loi. Dalrymple's Letters, p. 171.

[4] This opinion has been well supported by Mr. Serjeant Heywood (Vindication of Mr. Fox's History, p. 154.) In some few of Barillon's letters to the king of France, he speaks of James's intention établir la religion catholique: but these perhaps might be explained by a far greater number of passages, where he says only établir le libre exercice de la religion catholique, and by the general tenor of his correspondence. But though the primary object was toleration, I have no doubt but that they conceived this was to end in establishment. See what Barillon says, p. 84.; though the legal reasoning is false, as might be expected from a foreigner. It must, at all events, be admitted that the conduct of the king after the formation of the catholic junto in 1686, demonstrates an intention of overthrowing the Anglican establishment.

remarkable conversation of the king himself with the French ambassador, which leaves an impression on the mind that his projects were already irreconcilable with that pledge of support he had rather unadvisedly given to the Anglican church at his accession. This interpretation of his language is confirmed by the expressions used at the same time by Sunderland, which are more unequivocal, and point at the complete establishment of the catholic religion.[1] The particular care displayed by James in this conversation, and indeed in so many notorious instances, to place the army, as far as possible, in the command of catholic officers, has very much the appearance of his looking towards the employment of force in overthrowing the protestant church, as well as the civil privileges of his subjects. Yet he probably entertained confident hopes, in the outset of his reign, that he might not be driven to this necessity, or at least should only have occasion to restrain a fanatical populace. He would rely on the intrinsic excellence of his own religion, and still more on the temptations that his favour would hold out. For the repeal of the test would not have placed the two religions on a fair level. Catholics, however little qualified, would have filled, as in fact they did under the dispensing power, most of the principal stations in the court, law, and army.

[1] "Il [le roy] me répondit à ce que je venois de dire, que je connoissois le fond de ses intentions pour l'établissement de la religion catholique; qu'il n'esperoit en venir à bout que par l'assistance de V. M.; que je voyois qu'il venoit de donner des emplois dans ses troupes aux catholiques aussi bien qu'aux protestans; que cette égalité fâchoit beaucoup de gens, mais qu'il n'avoit pas laissé passer une occasion si importante sans s'en prévaloir; qu'il feroit de même à l'égard des choses practicables, et que je voyois plus clair sur cela dans ses desseins que ses propres ministres, s'en étant souvent ouvert avec moi sans reserve," p. 104. In a second conversation immediately afterwards, the king repeated, "que je connoissois le fond de ses desseins, et que je pouvois répondre que tout son but étoit d'établir la religion catholique; qu'il ne perdroit aucune occasion del faire . . . que peu à peu il va à son but, et que ce qu'il fait presentement emporte nécessairement l'exercice libre de la religion catholique, qui se trouvera établi avant qu'un acte de parlement l'autorise; que je connoissois assez l'Angleterre pour savoir que la possibilité d'avoir des emplois et des charges fera plus de catholiques que la permission de dire des messes publiques; que cependant il s'attendoit que V. M. ne l'abandonneroit pas," &c. p. 106. Sunderland entered on the same subject, saying, "Je ne sais pas si l'on voit en France les choses comme elles sont ici; mais je défie ceux qui les voyent de près de ne pas connoître que le roy mon maitre n'a rien dans le cœur si avant que l'envie d'établir la religion catholique; qu'il ne peut même, selon le bon sens et la droite raison, avoir d'autre but; que sans cela il ne sera jamais en sûreté, et sera toujours exposé au zèle indiscret de ceux qui échaufferont les peuples contre la catholicité, tant qu'elle ne sera pas *plus* pleinement établie; il y a une autre chose certaine, c'est que ce plan là ne peut réussir que par un concert et une liaison étroite avec le roi votre maitre; c'est un projet qui ne peut convenir qu'à lui, ni réussir que par lui. Toutes les autres puissances s'y opposeront ouvertement, ou le traverseront sous main. On sait bien que cela ne convient point au prince d'Orange; mais s'il ne sera pas en état de l'empêcher si on veut se conduire en France comme il est nécessaire, c'est-à-dire ménager l'amitié du roy d'Angleterre, et le contenir dans son projet. Je vois clairement l'appréhension que beaucoup de gens ont d'une liaison avec la France, et les efforts qu'on fait pour l'affoiblir; mais cela ne sera au pouvoir de personne, si on n'en a pas envie ce France; c'est sur quoi il faut que vous vous expliquiez nettement, que vous fassiez connoître que le roi votre maitre veut aider de bonne foi le roi d'Angleterre à établir fermement la religion catholique."

The word *plus* in the above passage is not in Dalrymple's extract from this letter, vol. ii. part ii. p. 174. 187. Yet for omitting this word Serjeant Heywood (not having attended to Dalrymple), censures Mr. Rose as if it had been done purposely. Vindic. of Fox, p. 154. But this is not quite judicious or equitable, since another critic might suggest that it was purposely interpolated. No one of common candour would suspect this of Mr. Fox; but his copyist, I presume, was not infallible. The word *plus* is evidently incorrect. The catholic religion was not established at all in any possible sense; what room could there be for the comparative? M. Mazure, who has more lately perused the letters of Barillon at Paris, prints the passage without *plus*. Hist. de la Révol. ii. 36. Certainly the whole conversation here ascribed to Sunderland points at something far beyond the free exercise of the Roman catholic religion.

The king told Barillon, he was well enough acquainted with England to be assured, that the admissibility to office would make more catholics than the right of saying mass publicly. There was, on the one hand, a prevailing laxity of principle in the higher ranks, and a corrupt devotedness to power for the sake of the emoluments it could dispense, which encouraged the expectation of such a nominal change in religion as had happened in the sixteenth century. And, on the other, much was hoped by the king from the church itself. He had separated from her communion in consequence of the arguments which her own divines had furnished; he had conversed with men bred in the school of Laud; and was slow to believe that the conclusions which he had, not perhaps illogically, derived from the semi-protestant theology of his father's reign, would not appear equally irresistible to all minds, when free from the danger and obloquy that had attended them. Thus by a voluntary return of the clergy and nation to the bosom of the catholic church, he might both obtain an immortal renown, and secure his prerogative against that religious jealousy which had always been the aliment of political factions.[1] Till this revolution however could be brought about, he determined to court the church of England, whose boast of exclusive and unlimited loyalty could hardly be supposed entirely hollow, in order to obtain the repeal of the penal laws and disqualifications which affected that of Rome. And though the maxims of religious toleration had been always in his mouth, he did not hesitate to propitiate her with the most acceptable sacrifice, the persecution of nonconforming ministers. He looked upon the dissenters as men of republican principles; and if he could have made his bargain for the free exercise of the catholic worship, I see no reason to doubt that the king would never have announced his general indulgence to tender consciences.[2]

But James had taken too narrow a view of the mighty people whom

[1] It is curious to remark that both James and Louis considered the re-establishment of the catholic religion and of the royal authority as closely connected, and parts of one great system. Barillon in Fox, Append. 19. 57. Mazure, i. 346. Mr. Fox maintains (Hist. p. 102.) that the great object of the former was absolute power, rather than the interests of popery. Doubtless, if James had been a protestant, his encroachments on the rights of his subjects would not have been less than they were, though not exactly of the same nature; but the main object of his reign can hardly be denied to have been either the full toleration, or the national establishment of the church of Rome. Mr. Fox's remark must, at all events, be limited to the year 1685.

[2] Fox, App., p. 33. Ralph, 869. The prosecution of Baxter for what was called reflecting on the bishops, is an instance of this. State Trials, ii. 494. Notwithstanding James's affected zeal for toleration, he did not scruple to congratulate Louis on the success of his very different mode of converting heretics. Yet I rather believe him to have been really averse to persecution; though with true Stuart insincerity he chose to flatter his patron. Dalrymple, p. 177. A book by Claude, published in Holland, entitled "Plaintes des Protestans cruellement opprimés dans le royaume de France," was ordered to be burned by the hangman, on the complaint of the French ambassador, and the translator and printer to be inquired after and prosecuted. Lond. Gazette, May 8. 1686. Jefferies objected to this in council as unusual; but the king was determined to gratify his most christian brother. Mazure, ii. 122. It is said also that one of the reasons for the disgrace of lord Halifax was his speaking warmly about the revocation of the edict of Nantes. Id. p. 55. Yet James sometimes blamed this himself, so as to displease Louis. Id. p. 56. In fact, it very much tended to obstruct his own views for the establishment of a religion which had just shown itself in so odious a form. For this reason, though a brief was read in churches for the sufferers, special directions were given that there should be no sermon. It is even said that he took on himself the distribution of the money collected for the refugees, in order to stop the subscription; or at least that his interference had that effect. The enthusiasm for the French protestants was such that single persons subscribed 500 or 1000 pounds; which, relatively to the opulence of the kingdom, almost equals any munificence of this age. Id. p. 123.

he governed. The laity of every class, the tory gentleman almost equally with the presbyterian artisan, entertained an inveterate abhorrence of the Romish superstition. Their first education, the usual tenor of preaching, far more polemical than at present, the books most current, the tradition of ancient cruelties and conspiracies, rendered this a cardinal point of religion even with those who had little beside. Many still gave credit to the popish plot; and with those who had been compelled to admit its general falsehood, there remained, as is frequently the case, an indefinite sense of dislike and suspicion, like the swell of waves after a storm, which attached itself to all the objects of that calumny.[1] This was of course enhanced by the insolent and injudicious confidence of the Romish faction, especially the priests, in their demeanour, their language, and their publications. Meanwhile a considerable change had been wrought in the doctrinal system of the Anglican church since the restoration. The men most conspicuous in the reign of Charles II. for their writings, and for their argumentative eloquence in the pulpit, were of the class who had been denominated Latitudinarian divines; and while they maintained the principles of the Remonstrants in opposition to the school of Calvin, were powerful and unequivocal supporters of the protestant cause against Rome. They made none of the dangerous concessions which had shaken the faith of the duke and duchess of York, they regretted the disuse of no superstitious ceremony, they denied not the one essential characteristic of the reformation, the right of private judgment, they avoided the mysterious jargon of a real presence in the Lord's Supper. Thus such an agreement between the two churches as had been projected at different times was become far more evidently impracticable, and the separation more broad and defined.[2] These men, as well as others who do not properly belong to the same class, were now distinguished by their courageous and able defences of the reformation. The victory, in the judgment of the nation, was wholly theirs. Rome had indeed her proselytes, but such as it would have been more honourable to have wanted. The people heard sometimes with indignation, or rather with contempt, that an unprincipled minister, a temporising bishop, or a licentious poet, had gone over to the side of a monarch who made conformity with his religion the only certain path to his favour.

[1] It is well known that the house of commons in 1685, would not pass the bill for reversing lord Stafford's attainder, against which a few peers had entered a very spirited protest. Parl. Hist. 1361. Barillon says, this was "parce que dans le préambule il y a des mots insérés qui semblent favoriser la religion catholique; cela seul a retardé la rehabilitation du comte de Stafford dont tous sont d'accord à l'égard du fond." Fox, App. p. 110. But there was another reason which might have weight. Stafford had been convicted on the evidence, not only of Oates, who had been lately found guilty of perjury, but of several other witnesses, especially Dugdale and Turberville. And these men had been brought forward by the government against lord Shaftesbury and College, the latter of whom had been hanged on their testimony. The reversal of lord Stafford's attainder, just as we now think it, would have been a disgrace to these crown prosecutions; and a conscientious tory would be loth to vote for it.

[2] "In all the disputes relating to that mystery before the civil wars, the church of England protestant writers owned the real presence, and only abstracted from the *modus* or manner of Christ's body being present in the eucharist, and therefore durst not say but it might be there by transubstantiation as well as by any other way. . . . It was only of late years that such principles have crept into the church of England; which having been blown into the parliament house, had raised continual tumults about religion ever since. Those unlearned and fanatical notions were never heard of till doctor Stillingfleet's late invention of them by which he exposed himself to the lash not only of the Roman catholics, but to that of many of church of England controvertists too." Life of James, ii. 146.

The short period of a four years' reign may be divided by several distinguishing points of time, which make so many changes in the posture of government. From the king's accession to the prorogation of parliament on November 30. 1685, he had acted apparently in concurrence with the same party that had supported him in his brother's reign, of which his own seemed the natural and almost undistinguishable continuation. This party, which had become incomparably stronger than the opposite, had greeted him with such unbounded professions,[1] the temper of its representatives had been such in the first session of parliament, that a prince less obstinate than James might have expected to succeed in attaining an authority which the nation seemed to offer. A rebellion speedily and decisively quelled confirms every government; it seemed to place his own beyond hazard. Could he have been induced to change the order of his designs, and accustom the people to a military force, and to a prerogative of dispensing with statutes of temporal concern, before he meddled too ostensibly with their religion, he would possibly have gained both the objects of his desire. Even conversions to popery might have been more frequent, if the gross solicitations of the court had not made them dishonourable. But, neglecting the hint of a prudent adviser, that the death of Monmouth left a far more dangerous enemy behind, he suffered a victory that might have ensured him success to inspire an arrogant confidence that led on to destruction. Master of an army, and determined to keep it on foot, he naturally thought less of a good understanding with parliament.[2] He had already rejected the proposition of employing bribery among the members, an expedient very little congenial to his presumptuous temper and notions of government. (Fox's App. 69. Dalrymple, 153.) They were assembled, in his

[1] See London Gazettes, 1685, passim: the most remarkable are inserted by Ralph and Kennet. I am sure the addresses which we have witnessed in this age among a neighbouring people are not on the whole more fulsome and disgraceful. Addresses, however, of all descriptions, as we well know, are generally the composition of some zealous individual, whose expressions are not to be taken as entirely those of the subscribers. Still these are sufficient to manifest the general spirit of the times.

The king's popularity at his accession, which all contemporary writers attest, is strongly expressed by lord Lonsdale. "The great interest, he had in his brother, so that all applications to the king seemed to succeed only as he favoured them, and the general opinion of him to be a prince steady above all others to his word, made him at that time the most popular prince that had been known in England for a long time. And from men's attempting to exclude him, they at this juncture of time made him their darling; no more was his religion terrible, his magnanimous courage, and the hardships he had undergone, were the discourse of all men. And some reports of a misunderstanding betwixt the French king and him, occasioned originally by the marriage of the lady Mary to the prince of Orange, industriously spread abroad to amuse the ignorant, put men in hopes of what they had long wished; that by a conjunction of Holland and Spain, &c., we might have been able to reduce France to the terms of the Pyrenean treaty, which was now become the terror of Christendom, we never having had a prince for many ages that had so great a reputation for experience and a martial spirit." P. 3. This last sentence is a truly amusing contrast to the real truth: James having been in his brother's reign the most obsequious and unhesitating servant of the French king.

[2] "On voit qu'insensiblement les catholiques auront les armes à la main; c'est un état bien différent de l'oppression où ils étoient, et dont les protestans zélés recoivent une grande mortification; ils voyent bien que le roy d'Angleterre fera le reste quand il le pourra. La levée des troupes, qui seront bientot complettes, fait juger que le roy d'Angleterre veut être en état de se faire obéir, et de n'être pas gêné par les loix qui se trouveront contraires à ce qu'il veut établir." Barillon, in Fox's App. 111. "Il me paroit (he says, June 25.), que le roy d'Angleterre a été fort aisé d'avoir une prétexte de lever des troupes, et qu'il croit, que l'entreprise de M. le duc de Monmouth ne servira qu'à le rendre plus maitre de son pays.' And on July 30.: "le projet du roy d'Angleterre est d'aboiir entièrement les milices, dont il a reconnu l'inutilité et le danger en cette dernière occasion; et de faire, s'il est possible, que le parlement établisse

opinion, to testify the nation's loyalty, and thankfulness to their gracious prince for not taking away their laws and liberties. But, if a factious spirit of opposition should once prevail, it could not be his fault if he dismissed them till more becoming sentiments should again gain ground.[1] Hence, he did not hesitate to prorogue, and eventually to dissolve, the most compliant house of commons that had been returned since his family had sat on the throne, at the cost of 700,000*l.*, a grant of supply which thus fell to the ground, rather than endure any opposition on the subject of the test and penal laws. Yet, from the strength of the court in all divisions, it must seem not improbable to us that he might, by the usual means of management, have carried both of those favourite measures, at least through the lower house of parliament. For the crown lost the most important division only by one vote, and had in general a majority. The very address about unqualified officers, which gave the king such offence as to bring on a prorogation, was worded in the most timid manner; the house having rejected unanimously the words first inserted by their committee, requesting that his majesty would be pleased not to continue them in their employments, for a vague petition that "he would be graciously pleased to give such directions that no apprehensions or jealousies may remain in the hearts of his majesty's good and faithful subjects."[2]

The second period of this reign extends from the prorogation of parliament to the dismissal of the earl of Rochester from the treasury in 1686. During this time James, exasperated at the reluctance of the commons to acquiesce in his measures, and the decisive opposition of the church, threw off the half restraint he had imposed on himself; and showed plainly that, with a bench of judges to pronounce his commands, and an army to enforce them, he would not suffer the mockery of constitutional limitations to stand any longer in his way. Two important steps were made this year towards the accomplishment of his designs, by the judgment of the court of king's bench in the case

le fond destiné pour les milices à l'entretien des troupes réglées. Tout cela change entièrement l'état de ce pays ici, et met les Anglois dans une condition bien différente de celle où ils ont été jusques à present. Ils le connoissent, et voyent bien qu'un roy de différente religion que celle du pays, et qui se trouve armé, ne renoncera pas aisément aux avantages que lui donne la défaite des rebelles, et les troupes qu'il a sur pied." And afterwards: "Le roi d'Angleterre m'a dit que quoiqu'il arrive, il conservera les troupes sur pied, quand même le parlement ne lui donneroit pour les entretenir. Il connoit bien que le parlement verra mal volontiers cet établissement; mais il veut être assuré du dedans de son pays, et il croit ne le pouvoir être sans cela." Dalrymple, 169, 170.

[1] It had been the intention of Sunderland and the others to dissolve parliament, as soon as the revenue for life should be settled, and to rely in future on the assistance of France. Fox's App. 59, 60. Mazure, i. 432. But this was prevented partly by the sudden invasion of Monmouth, which made a new session necessary, and gave hopes of a large supply for the army; partly by the unwillingness of the king of France to advance as much money as the English government wanted. In fact the plan of continual prorogations answered as well.

[2] Journ. Nov. 14. Barillon says that the king answered this humble address, "avec des marques de fierté et de colère sur le visage, qui faisoit assez connôitre ses sentimens." Dalrymple, 172. See too his letter in Fox, 139.

A motion was made to ask the lords' concurrence in this address, which according to the journals was lost by 212 to 138. In the life of James, ii. 55., it is said that it was carried against the motion by only four voices; and this I find confirmed by a manuscript account of the debates (Sloane MSS. 1470), which gives the numbers 212 to 208. The journal probably is mis-printed, as the court and country parties were very equal. It is said in this manuscript that those who opposed the address opposed also the motion for requesting the lords' concurrence in it; but James represents it otherwise, as a device of the court to quash the proceeding.

of sir Edward Hales, confirming the right of the crown to dispense with the test act, and by the establishment of the new ecclesiastical commission.

The kings of England, if not immemorially, yet from a very early era in our records, had exercised a prerogative unquestioned by parliament, and recognised by courts of justice, that of granting dispensations from the prohibitions and penalties of particular laws. The language of ancient statutes was usually brief and careless, with few of those attempts to regulate prospective contingencies, which, even with our pretended modern caution, are so often imperfect; and, as the sessions were never regular, sometimes interrupted for several years, there was a kind of necessity, or great convenience, in deviating occasionally from the rigour of a general prohibition; more often perhaps some motive of interest or partiality would induce the crown to infringe on the legal rule. This dispensing power, however, grew up, as it were, collaterally to the sovereignty of the legislature, which it sometimes appeared to overshadow. It was, of course, asserted in large terms by counsellors of state, and too frequently by the interpreters of law. Lord Coke, before he had learned the bolder tone of his declining years, lays it down, that no act of parliament can bind the king from any prerogative which is inseparable from his person, so that he may not dispense with it by a non-obtante; such is his sovereign power to command any of his subjects to serve him for the public weal, which solely and inseparably is annexed to his person, and cannot be restrained by any act of parliament. Thus, although the statute 23 H. VI. c. 8. provides that all patents to hold the office of sheriff for more than one year shall be void, and even enacts that the king shall not dispense with it; yet it was held by all the judges in the reign of Henry VII., that the king may grant such a patent for a longer term on good grounds, whereof he alone is the judge. So also the statutes which restrain the king from granting pardons in case of murder have been held void; and doubtless the constant practice has been to disregard them. (Coke, 12 Rep. 18.)

This high and dangerous prerogative, nevertheless, was subject to several limitations, which none but the grosser flatterers of monarchy could deny. It was agreed among lawyers that the king could not dispense with the common law, nor with any statute prohibiting that which was *malum in se*, nor with any right or interest of a private person, or corporation.[1] The rules, however, were still rather complicated, the boundaries indefinite, and therefore varying according to the political character of the judges. For many years dispensations had been confined to taking away such incapacity as either the statutes of a college, or some law of little consequence, perhaps almost obsolete, might happen to have created. But when a collusive action was brought against sir Edward Hales, a Roman catholic, in the name of his servant, to recover the penalty of 500*l.* imposed by the test act, for accepting the commission of colonel of a regiment, without the previous qualification of receiving the sacrament in the church of England, the whole importance of the alleged prerogative became visible, and the fate of the established constitution seemed to hang upon the decision

[1] Vaughan's Reports. Thomas v. Sorrell, 333.

The plaintiff's advocate, Northey, was known to have received his fee from the other side, and was thence suspected, perhaps unfairly, of betraying his own cause;[1] but the chief-justice Herbert showed that no arguments against this prerogative would have swayed his determination. Not content with treating the question as one of no difficulty, he grounded his decision in favour of the defendant upon principles that would extend far beyond the immediate case. He laid it down that the kings of England were sovereign princes, that the laws of England were the king's laws; that it was consequently an inseparable prerogative of the crown to dispense with penal laws in particular cases, for reasons of which it was the sole judge. This he called the ancient remains of the sovereign power and prerogative of the kings of England, which never yet was taken from them, nor could be. There was no law, he said, that might not be dispensed with by the supreme lawgiver (meaning evidently the king, since the proposition would otherwise be impertinent); though he made a sort of distinction as to those which affected the subject's private right. But the general maxims of slavish churchmen and lawyers were asserted so broadly that a future judge would find little difficulty in making use of this precedent to justify any stretch of arbitrary power.[2]

It is by no means evident that the decision in this particular case of Hales, which had the approbation of eleven judges out of twelve, was against law.[3] The course of former precedents seems rather to furnish its justification. But the less untenable such a judgment in favour of the dispensing power might appear, the more necessity would men of reflection perceive of making some great change in the relations of the people towards their sovereign. A prerogative of setting aside the enactments of parliament, which in trifling matters, and for the sake of conferring a benefit on individuals, might be suffered to exist with little mischief, became intolerable when exercised in contravention of the very principle of those statutes which had been provided for the security of fundamental liberties or institutions. Thus the test act, the great achievement, as it had been reckoned, of the protestant party, for the sake of which the most subservient of parliaments had just then ventured to lose the king's favour, became absolutely nugatory and ineffective, by a construction which the law itself did not reject. Nor was it easy to provide any sufficient remedy by means of parliament; since it was the doctrine of the judges, that the king's inseparable and sovereign prerogatives in matters of government could not be taken away or restrained by statute. The unadvised assertion in a court of justice of this principle, which though not by any means novel, had never been advanced in a business of such universal concern and interest, may be said to have sealed the condemnation of the house of Stuart. It made the co-existence of an hereditary line, claiming a sovereign prerogative paramount to the liberties they had vouchsafed to concede, incompatible with the security or probable duration of

[1] Burnet and others. This hardly appears by Northey's argument.
[2] State Trials, xi. 1165-1280. 2 Shower's Reports, 475.
[3] The dissentient judge was Street; and Powell doubted. The king had privately secured this opinion of the bench in his favour before the action was brought. Life of James, ii. 79.

those liberties. This incompatibility is the true basis of the revolution in 1688.

But, whatever pretext the custom of centuries or the authority of compliant lawyers might afford for these dispensations from the test, no legal defence could be made for the ecclesiastical commission of 1686. The high commission court of Elizabeth had been altogether taken away by an act of the long parliament, which went on to provide that no new court should be elected with the like power, jurisdiction, and authority. Yet the commission issued by James II. followed very nearly the words of that which had created the original court under Elizabeth, omitting a few particulars of little moment.[1] It is not known, I believe, at whose suggestion the king adopted this measure. The pre-eminence reserved by the commission to Jefferies, whose presence was made necessary to all their meetings, and the violence with which he acted in all their transactions on record, seem to point him out as its great promoter; though it is true that, at a later period, Jefferies seems to have perceived the destructive indiscretion of the popish counsellors. It displayed the king's change of policy and entire separation from that high-church party, to whom he was indebted for the throne; since the manifest design of the ecclesiastical commission was to bridle the clergy, and silence the voice of protestant zeal. The proceedings against the bishop of London, and other instances of hostility to the established religion, are well known.

Elated by success and general submission, exasperated by the reluctance and dissatisfaction of those on whom he had relied for an active concurrence with his desires, the king seems at least by this time to have formed the scheme of subverting, or impairing as far as possible, the religious establishment. He told Barillon, alluding to the ecclesiastical commission, that God had permitted all the statutes which had been enacted against the catholic religion to become the means of its re-establishment. (Mazure, ii. 130.) But the most remarkable evidence of this design was the collation of Massey, a recent convert, to the deanery of Christ Church, with a dispensation from all the statutes of uniformity and other ecclesiastical laws, so ample that it made a precedent, and such it was doubtless intended to be, for bestowing any benefices upon members of the church of Rome. This dispensation seems to have been not generally known at the time. Burnet has stated the circumstances of Massey's promotion inaccurately; and no historian, I believe, till the publication of the instrument after the middle of the last century, was fully aware of the degree in which the king had trampled upon the securities of the established church in this transaction.[2]

[1] State Trials, xi. 1132. et seq. The members of the commission were the primate Sancroft (who never sat), Crew and Sprat, bishops of Durham and Rochester, the chancellor Jefferies, the earls of Rochester and Sunderland, and chief-justice Herbert. Three were to form a quorum, but the chancellor necessarily to be one. Ralph, 929. The earl of Mulgrave was introduced afterwards.

[2] Henry Earl of Clarendon's Papers, ii. 278. In Gutch's Collectanea Curiosa, vol. i. p. 287., we find not only this licence to Massey, but one to Obadiah Walker, master of University College, and to two fellows of the same, and one of Brazen-nose College, to absent themselves from church, and not to take the oaths of supremacy and allegiance, or do any other thing to which, by the laws and statutes of the realm, or those of the college, they are obliged. There is also, in the same book, a dispensation for one Sclater, curate of Putney, and rector of Esher, for using the common prayer, &c. &c. Id. p. 397. These are in May, 1686, and subscribed

A deeper impression was made by the dismissal of Rochester from his post of lord treasurer; so nearly consequent on his positive declaration of adherence to the protestant religion, after the dispute held in his presence at the king's particular command, between divines of both persuasions, that it had much the appearance of a resolution taken at court to exclude from the high offices of the state all those who gave no hope of conversion.[1] Clarendon had already given way to Tyrconnel in the government of Ireland; the privy seal was bestowed on a catholic peer, lord Arundel; lord Bellasis, of the same religion, was now placed at the head of the commission of the treasury; Sunderland, though he did not yet cease to conform, made no secret of his pretended change of opinion; the council board, by virtue of the dispensing power, was filled with those who would refuse the test; a small junto of catholics, with father Petre, the king's confessor, at their head, took the management of almost all affairs upon themselves;[2] men, whose known want of principle gave reason to expect their compliance, were raised to bishoprics; there could be no rational doubt of a concerted scheme to depress and discountenance the established church. The dismissal of Rochester, who had gone great lengths to preserve his power and emoluments, and would in all probability have concurred in the establishment of arbitrary power under a protestant sovereign,[3] may be reckoned the most unequivocal evidence of the king's intentions; and from thence we may date the decisive measures that were taken to counteract them.

It was, I do not merely say the interest, but the clear right and bounden duty, of the prince of Orange, to watch over the internal politics of England, on account of the near connexion which his own

by Powis, the solicitor-general. The attorney-general, Sawyer, had refused; as we learn from Reresby, p. 133., the only contemporary writer, perhaps, who mentions this very remarkable aggression on the established church.

[1] The catholic lords, according to Barillon, had represented to the king, that nothing could be done with parliament so long as the treasurer caballed against the designs of his majesty. James promised to dismiss him if he did not change his religion. Mazure, ii. 170. The queen had previously been rendered his enemy by the arts of Sunderland, who persuaded her that lord and lady Rochester had favoured the king's intimacy with the countess of Dorchester, in order to thwart the popish intrigue. **Id.** 149. "On voit," says Barillon, on the treasurer's dismissal, "que la cabale catholique a entièrement prevalu. On s'attendoit depuis quelque temps à ce qui est arrivé au comte de Rochester; mais l'exécution fait encore une nouvelle impression sur les esprits." P. 181.

[2] Life of James, 74. Barillon frequently mentions this cabal, as having in effect the whole conduct of affairs in their hands. Sunderland belonged to them; but Jefferies, being reckoned on the protestant side, had, I believe, very little influence for at least the two latter years of the king's reign. "Les affaires de ce pays-ci," says Bonrepos, in 1686, "ne roulent à présent que sur la religion. Le roi est absolument gouverné par les catholiques. My lord Sunderland, ne se maintient que par ceux-ci, et par son dévouement á faire tout ce qu'il croit être agréable sur ce point. Il a le secret des affaires de Rome." Mazure, ii. 124. "On feroit ici," says Barillon, the same year, "ce que on fait en France," [that is, I suppose, dragonner et fusiller les hérétiques] "si l'on pouvoit espérer de réussir." P. 127.

[3] Rochester makes so very bad a figure in all Barillon's correspondence, that there really seems no want of candour in this supposition. He was evidently the most active co-operator in the connexion of both the brothers with France, and seems to have had as few compunctious visitings, where the church of England was not concerned, as Sunderland himself. Godolphin was too much implicated, at least by acquiescence, in the counsels of this reign; yet we find him suspected of not wishing "se passer entièrement de parlement, et à rompre nettement avec le prince d'Orange." Fox, App. p. 60.

If Rochester had gone over to the Romanists, many, probably, would have followed: on the other hand, his steadiness retained the wavering. It was one of the first great disappointments with which the king met. But his dismissal from the treasury created a sensible alarm. Dalrymple, 179.

birth and his marriage with the presumptive heir had created. He was never to be reckoned a foreigner as to this country, which, even in the ordinary course of succession, he might be called to govern. From the time of his union with the princess Mary, he was the legitimate and natural ally of the whig party; alien in all his sentiments from his two uncles, neither of whom, especially James, treated him with much regard, on account merely of his attachment to religion and liberty, for he might have secured their affection by falling into their plans. Before such differences as subsisted between these personages, the bonds of relationship fall asunder like flax; and William would have had at least the sanction of many precedents in history, if he had employed his influence to excite sedition against Charles or James, and to thwart their administration. Yet his conduct appears to have been merely defensive; nor had he the remotest connexion with the violent and factious proceedings of Shaftesbury and his partisans. He played a very dexterous, but apparently very fair, game throughout the last years of Charles; never losing sight of the popular party, through whom alone he could expect influence over England during the life of his father-in-law, while he avoided any direct rupture with the brothers, and every reasonable pretext for their taking offence.

It has never been established by any reputable testimony, though perpetually asserted, nor is it in the least degree probable, that William took any share in prompting the invasion of Monmouth.[1] But it is nevertheless manifest that he derived the greatest advantage from this absurd rebellion and from its failure; not only, as it removed a mischievous adventurer, whom the multitude's idle predilection had elevated so high, that factious men would, under every government, have turned to account his ambitious imbecility; but as the cruelty with which this unhappy enterprise was punished rendered the king odious,[2] while the success of his arms inspired him with false confidence, and neglect of caution. Every month, as it brought forth evidence of

[1] Lord Dartmouth wrote to say that Fletcher told him there were good grounds to suspect that the prince, underhand, encouraged the expedition, with design to ruin the duke of Monmouth; and this Dalrymple believes, p. 136. It is needless to observe, that such subtle and hazardous policy was totally out of William's character, nor is there much more reason to believe what is insinuated by James himself, (Macpherson's Extracts, p. 144. Life of James, ii. 34.), that Sunderland had been in secret correspondence with Monmouth: unless indeed it were, as seems hinted in the latter work, with the king's knowledge.

[2] The number of persons who suffered the sentence of the law, in the famous western assize of Jefferies, has been differently stated; but according to a list in the Harleian Collection, n. 4689, it appears to be as follows: at Winchester, one (Mrs. Lisle) executed; at Salisbury, none; at Dorchester, 74 executed, 171 transported; at Exeter, 14 executed, 7 transported; at Taunton, 144 executed, 284 transported; at Wells, 97 executed, 393 transported. In all, 330 executed, 855 transported; besides many that were left in custody for want of evidence. It may be observed, that the prisoners sentenced to transportation appear to have been made over to some gentlemen of interest at court; among others to sir Christopher Musgrave, who did not blush to beg the grant of their unfortunate countrymen, to be sold as slaves in the colonies.

The apologists of James II. have endeavoured to lay the entire blame of these cruelties on Jefferies, and to represent the king as ignorant of them. Roger North tells a story of his brother's interference, which is plainly contradicted by known dates, and the falsehood of which throws just suspicion on his numerous anecdotes. See State Trials, xi. 303. But the king speaks with apparent approbation of what he calls Jefferies's campaign, in writing to the prince of Orange (Dalrymple, 165.); and I have heard that there are extant additional proofs of his perfect acquaintance with the details of those assizes; nor, indeed, can he be supposed ignorant of them. Jefferies himself, before his death, declared that he had not been half bloody enough for him by whom he was employed. Burnet, 651. (note to Oxford edition, vol. iii.) The king, or his biographer in his behalf, makes a very awkward apology for the execution

James's arbitrary projects, increased the number of those who looked for deliverance to the prince of Orange, either in the course of succession, or by some special interference. He had, in fact, a stronger motive for watching the councils of his father-in-law than has generally been known. The king was, at his accession, in his fifty-fifth year, and had no male children; nor did the queen's health give much encouragement to hope for them. Every dream of the nation's voluntary return to the church of Rome must have vanished, even if the consent of a parliament could be obtained, which was nearly vain to think of; or if open force and the aid of France should enable James to subvert the established religion, what had the catholics to anticipate from his death, but that fearful reaction which had ensued upon the accession of Elizabeth? This had already so much disheartened the moderate part of their body that they were most anxious not to urge forward a change, for which the kingdom was not ripe, and which was so little likely to endure, and used their influence to promote a reconciliation between the king and prince of Orange, contenting themselves with that free exercise of their worship which was permitted in Holland.[1] But the ambitious priesthood who surrounded the throne had bolder projects. A scheme was formed early in the king's reign, to exclude the princess of Orange from the succession in favour of her sister Anne, in the event of the latter's conversion to the Romish faith. The French ministers at our court, Barillon and Bonrepos, gave ear to this hardy intrigue. They flattered themselves that both Anne and her husband were favourably disposed. But in this they were wholly mistaken. No one could be more unconquerably fixed in her religion than that princess. The king himself, when the Dutch ambassador, Van Citers, laid before him a document, probably drawn up by some catholics of his court, in which these audacious speculations were developed, declared his indignation at so criminal a project. It was not even in his power, he let the prince afterwards know by a message, or in that of parliament, according to the principles which had been maintained in his own behalf, to change the fundamental order of succession to the crown.[2] Nothing indeed can more forcibly paint the desperation of

of major Holmes, which is shown by himself to have been a gross breach of faith. Life of James, ii. 43.

It is unnecessary to dwell on what may be found in every history; the trials of Mrs. Lisle, Mrs. Gaunt, and alderman Cornish; the former before Jefferies, the two latter before Jones, his successor as chief-justice of K. B., a judge nearly as infamous as the former, though not altogether so brutal. Both Mrs. Lisle's and Cornish's convictions were without evidence, and consequently were reversed after the revolution. State Trials, vol. ix.

[1] Several proofs of this appear in the correspondence of Barillon. Fox, 135. Mazure, ii. 22. The nuncio, M. d'Adda, was a moderate man, and united with the moderate catholic peers, Bellasis, Arundel, and Powes. Id. 127. This party urged the king to keep on good terms with the prince of Orange, and to give way about the test. Id. 184. 255. They were disgusted at father Petre's introduction into the privy council; 308. 353. But it has ever been the misfortune of that respectable body to suffer unjustly for the follies of a few. Barillon admits very early in James's reign, that many of them disliked the arbitrary proceedings of the court; "ils prétendent être bons Anglois, c'est-à-dire, ne pas désirer que le roi d'Angleterre ôte à la nation ses privilèges et ses libertés." Mazure, i. 404.

William openly declared his willingness to concur in taking off the penal laws, provided the test might remain. Burnet, 694. Dalrymple, 184. Mazure, ii. 216. 250. 346. James replied that he must have all or nothing. Id. 353.

[2] I do not know that this intrigue has been brought to light before the recent valuable publication of M. Mazure, certainly not with such full evidence. See i. 417.; ii. 128. 160. 165. 167, 182. 188. 192. Barillon says to his master in one place;—"C'est une matière fort délicate à

the popish faction than their entertainment of so preposterous a scheme. But it naturally increased the solicitude of William about the intrigues of the English cabinet. It does not appear that any direct overtures were made to the prince of Orange, except by a very few malecontents, till the embassy of Dykvelt from the States in the spring of 1687. It was William's object to ascertain, through that minister, the real state of parties in England. Such assurances as he carried back to Holland gave encouragement to an enterprise that would have been equally injudicious and unwarrantable without them. (Burnet. Dalrymple. Mazure.) Danby, Halifax, Nottingham, and others of the tory, as well as whig factions, entered into a secret correspondence with the prince of Orange; some from a real attachment to the constitutional limitations of monarchy; some from a conviction that, without open apostasy from the protestant faith, they could never obtain from James the prizes of their ambition. This must have been the predominant motive with lord Churchill, who never gave any proof of solicitude about civil liberty; and his influence taught the princess Anne to distinguish her interest from those of her father. It was about this time also that even Sunderland entered upon a mysterious communication with the prince of Orange; but whether he afterwards served his present master only to betray him, as has been generally believed, or sought rather to propitiate, by clandestine professions, one who might in the course of events become such, is not perhaps what the evidence already known to the world will enable us to determine.[1] The apologists of James have often represented Sunderland's treachery as extending back to the commencement of this reign, as if he had entered upon the king's service with no other aim than to put him on measures that would naturally lead to his ruin. But the simpler hypothesis is probably nearer the truth: a corrupt and artful statesman could have no better prospect for his own advantage than the power and popularity of a government which he administered; it was a conviction of the king's incorrigible and infatuated adherence to designs which the rising spirit of the nation rendered utterly infeasible, an apprehension that, whenever a free parliament should be called, he might experience the fate of Strafford as an expiation for the sins of the crown, which determined him to secure as far as possible his own indemnity upon a revolution that he could not have withstood.[2]

traiter. Je sais pourtant qu'on en parle au roi d'Angleterre; et qu'avec le temps on ne désespère pas de trouver des moyens pour faire passer la couronne sur la tête d'un heritier catholique. Il faut pour cela venir à bout de beaucoup des choses qui ne sont encore que commencées."

[1] The correspondence began by an affectedly obscure letter of lady Sunderland to the prince of Orange, dated Mar. 7. 1687. The meaning however cannot be misunderstood. Sunderland himself sent a short letter of compliment by Dykvelt, May 28., referring to what that envoy had to communicate. Churchill, Nottingham, Rochester, Devonshire, and others, wrote also to Dykvelt. Halifax was in correspondence at the end of 1686.

[2] Sunderland does not appear, by the extracts from Barillon's letters, published by M. Mazure, to have been the adviser of the king's most injudicious measures. He was united with the queen, who had more moderation than her husband. It is said by Barillon that both he and Petre were against the prosecution of the bishops, ii. 448. The king himself ascribes this step to Jefferies, and seems to glance also at Sunderland as its adviser. Life of James, ii. 156. He speaks more explicitly as to Jefferies in Macpherson's Extracts, 151. Yet lord Clarendon's Diary, ii. 49., tends to acquit Jefferies. Probably the king had nobody to blame but himself. One cause of Sunderland's continuance in the apparent support of a policy which he knew to be destructive was his poverty. He was in the pay of France, and even importunate for its money. Mazure, 372. Dalrymple, 270. et post. Louis only gave him half what he demanded.

The dismissal of Rochester was followed up at no great distance by the famous declaration for liberty of conscience, suspending the execution of all penal laws concerning religion, and freely pardoning all offences against them, in as full a manner as if each individual had been named. He declared also his will and pleasure that the oaths of supremacy and allegiance, and the several tests enjoined by statutes of the late reign, should no longer be required of any one before his admission to offices of trust. The motive of this declaration was not so much to relieve the Roman catholics from penal and incapacitating statutes, (which, since the king's accession and the judgment of the court of king's bench in favour of Hales, were virtually at an end,) as by extending to the protestant dissenters the same full measure of toleration, to enlist under the standard of arbitrary power those who had been its most intrepid and steadiest adversaries. It was after the prorogation of parliament that he had begun to caress that party, who in the first months of his reign had endured a continuance of their persecution.[1] But the clergy in general detested the nonconformists still more than the papists, and had always abhorred the idea of even a parliamentary toleration. The present declaration went much farther than the recognised prerogative of dispensing with prohibitory statutes. Instead of removing the disability from individuals by letters patent, it swept away at once, in effect, the solemn ordinances of the legislature. There was, indeed, a reference to the future concurrence of the two houses, whenever he should think it convenient for them to meet; but so expressed as rather to insult, than pay respect to, their authority. And no one could help considering the declaration of a similar nature just published in Scotland, as the best commentary on the present. In that he suspended all laws against the Roman catholics and moderate presbyterians, "by his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve;" and its whole tenor spoke, in as unequivocal language as his grandfather was accustomed to use, his contempt of all pretended limitations on his will. (Ralph, 943. Mazure, ii. 207.) Though the constitution of Scotland was not so well balanced as our own, it was notorious that the crown did not legally possess so absolute a power in that kingdom; and men might conclude that, when he should think it less necessary to observe some measures with his English subjects, he would address them in the same strain.

Those, indeed, who knew by what course his favour was to be sought, did not hesitate to go before, and light him, as it were, to the altar on which their country's liberty was to be the victim. Many of the addresses which fill the columns of the London Gazette in 1687, on occasion of the declaration of indulgence, flatter the king with assertions of his dispensing power. The benchers and barristers of the

Without the blindest submission to the king, he was every moment falling; and this drove him into a step as injudicious as it was unprincipled, his pretended change of religion, which was not publicly made till June, 1688, though he had been privately reconciled, it is said, (Mazure, ii. 463.) more than a year before by father Petre.

[1] "This defection of those his majesty had hitherto put the greatest confidence in [Clarendon and Rochester], and the sullen disposition of the church of England party in general, made him think it necessary to reconcile another; and yet he hoped to do it in such a manner as not to disgust quite the church-man neither." Life of James, ii. 102.

[2] London Gazette, Mar. 18. 1687. Ralph, 945.

Middle Temple, under the direction of the prostitute Shower, were again foremost in the race of infamy. They thank him "for asserting his own royal prerogatives, the very life of the law, and of their profession; which prerogatives, as they were given by God himself, so no power upon earth could diminish them, but they must always remain entire and inseparable from his royal person; which prerogatives, as the addressers had studied to know, so they were resolved to defend, by asserting with their lives and fortunes that divine maxim, *à Deo rex, à lege rex.*"[1]

These addresses, which, to the number of some hundreds, were sent up from every description of persons, the clergy, the nonconformists of all denominations, the grand juries, the justices of the peace, the corporations, the inhabitants of towns, in consequence of the declaration, afford a singular contrast to what we know of the prevailing dispositions of the people in that year, and of their general abandonment of the king's cause before the end of the next. Those from the clergy, indeed, disclose their ill-humour at the unconstitutional indulgence, limiting their thanks to some promises of favour the king had used towards the established church. But as to the rest, we should have cause to blush for the servile hypocrisy of our ancestors, if there were not good reason to believe that these addresses were sometimes the work of a small minority in the name of the rest, and that the grand juries and the magistracy in general had been so garbled for the king's purposes in this year that they formed a very inadequate representation of that great class from which they ought to have been taken.[2] It was however very natural that they should deceive the court. The catholics were eager for that security which nothing but an act of the legislature could afford; and James, who, as well as his minister, had a strong aversion to the measure, seems about the latter end of the summer of 1687 to have made a sudden change in his scheme of government, and resolved once more to try the disposition of a parliament. For this purpose, having dissolved that from which he could expect nothing hostile to the church, he set himself to manage the election of another in such a manner as to ensure his main object, the security of the Romish religion.[3]

[1] London Gazette, June 9. 1687. Shower had been knighted a little before, on presenting, as recorder of London, an address from the grand jury of Middlesex, thanking the king for his declaration. Id. May 12.

[2] London Gazettes of 1687 and 1688, passim. Ralph, 946. 368. These addresses grew more ardent after the queen's pregnancy became known. They were renewed of course after the birth of the prince of Wales. But scarce any appear after the expected invasion was announced. The tories (to whom add the dissenters) seem to have thrown off the mask at once, and deserted the king whom they had so grossly flattered as instantaneously as parasites on the stage desert their patron on the first tidings of his ruin.

The dissenters have been a little ashamed of their compliance with the declaration, and of their silence in the popish controversy during this reign. Neal, 755. 768.; and see Biog. Brit. art. Alsop. The best excuses are that they had been so harassed that it was not in human nature to refuse a mitigation of suffering almost on any terms; that they were by no means unanimous in their transitory support of the court; and that they gladly embraced the first offers of an equal indulgence held out to them by the church.

[3] "The king, now finding that nothing which had the least appearance of novelty, though never so well warranted by the prerogative, would go down with the people, unless it had the parliamentary stamp on it, resolved to try if he could get the penal laws and test taken off by that authority." Life of James, ii. 134. But it seems by M. Mazure's authorities, that neither the king nor lord Sunderland wished to convoke a parliament, which was pressed forward by the eager catholics. ii. 399.

"His first care," says his biographer Innes, "was to purge the corporations from that leaven which was in danger of corrupting the whole kingdom; so he appointed certain regulators to inspect the conduct of several borough towns, to correct abuses where it was practicable, and where not, by forfeiting their charters, to turn out such rotten members as infected the rest. But in this, as in most other cases, the king had the fortune to choose persons not too well qualified for such an employment, and extremely disagreeable to the people; it was a sort of motley council made up of catholics and presbyterians, a composition which was sure never to hold long together, or that could probably unite in any method suitable to both their interests; it served therefore only to increase the public odium by their too arbitrary ways of turning out and putting in; and yet those who were thus intruded, as it were, by force, being of the presbyterian party, were by this time become as little inclinable to favour the king's intentions as the excluded members." (Life of James, p. 139.)

This endeavour to violate the legal rights of electors as well as to take away other vested franchises, by new modelling corporations through commissions granted to regulators, was the most capital delinquency of the king's government; because it tended to preclude any reparation for the rest, and directly attacked the fundamental constitution of the state.[1] But, like all his other measures, it displayed not more ill-will to the liberties of the nation than inability to overthrow them. The catholics were so small a body, and so weak, especially in corporate towns, that the whole effect produced by the regulators was to place municipal power and trust in the hands of the nonconformists, those precarious and unfaithful allies of the court, whose resentment of past oppression, hereditary attachment to popular principles of government, and inveterate abhorrence of popery, were not to be effaced by an unnatural coalition. Hence, though they availed themselves, and surely without reproach, of the toleration held out to them, and even took the benefit of the scheme of regulation, so as to fill the corporation of London and many others, they were, as is confessed above, too much of Englishmen and protestants for the purposes of the court. The wiser part of the churchmen made secret overtures to their party; and by assurances of a toleration, if not also of a comprehension within the Anglican pale, won them over to a hearty concurrence in the great project that was on foot.[2] The king found it necessary to descend so much from the haughty attitude he had taken at the outset of his reign, as personally to solicit men of rank and local influence for their votes on the two great measures of repealing the test and penal laws. The country gentlemen, in their different counties, were tried with circular questions, whether they would comply with the king in their elections, or, if themselves chosen, in parliament. They who refused such a promise were erased from the

[1] Ralph, 965. 966. The object was to let in the dissenters. This was evidently a desperate game: James had ever mortally hated the sectaries as enemies to monarchy; and they were irreconcilably adverse to all his schemes.

[2] Burnet. Life of James, 169. Lord Halifax, as is supposed, published a letter of advice to the dissenters, warning them against a coalition with the court, and promising all indulgence from the church. Ralph, 950. Somers Tracts, viii. 50. D'Oyly's Life of Sancroft, i. 326.

lists of justices and deputy-lieutenants.[1] Yet his biographer admits that he received little encouragement to proceed in the experiment of a parliament; (Life of James, 183.) and it is said by the French ambassador that evasive answers were returned to these questions, with such uniformity of expression as indicated an alarming degree of concert. (Mazure, ii. 302.)

It is unnecessary to dwell on circumstances so well known as the expulsion of the fellows of Magdalen College.[2] It was less extensively mischievous than the new-modelling of corporations, but perhaps a more glaring act of despotism. For though the crown had been accustomed from the time of the reformation to send very peremptory commands to ecclesiastical foundations, and even to dispense with their statutes at discretion, with so little resistance that few seemed to doubt of its prerogative; though Elizabeth would probably have treated the fellows of any college much in the same manner as James II., if they had proceeded to an election in defiance of her recommendation; yet the right was not the less clearly theirs, and the struggles of a century would have been thrown away, if James II. was to govern as the Tudors, or even as his father and grandfather, had done before him. And though Parker, bishop of Oxford, the first president whom the ecclesiastical commissioners obtruded on the college, was still nominally a protestant,[3] his successor Giffard was an avowed member of the church of Rome. The college was filled with persons of the same persuasion; mass was said in the chapel, and the established religion was excluded with a degree of open force which entirely took away all security for its preservation in any other place. This latter act, especially, of the Magdalen drama, in a still greater degree than the nomination of Massey to the deanery of Christ Church, seems a decisive proof that the king's repeated promises of contenting himself with a toleration of his own religion would have yielded to his insuperable bigotry and the zeal of his confessor. We may perhaps add to these encroachments upon the act of uniformity, the design imputed to him of conferring the archbishopric of York on father Petre; yet there would have been difficulties that seem insurmountable in the way of this, since, the validity of Anglican orders not being acknowledged by the church of Rome, Petre would not have sought consecration at the hands of Sancroft; nor, had he done so, would the latter have conferred it on him, even if the chapter of York had gone through the indispensable form of an election.[4]

The infatuated monarch was irritated by that which he should have

[1] Ralph, 967. Lonsdale, p. 15. "It is to be observed," says the author of this memoir, "that most part of the offices in the nation, as justices of the peace, deputy-lieutenants, mayors, aldermen, and freemen of towns, are filled with Roman catholics and dissenters, after having suffered as many regulations as were necessary for that purpose. And thus stands the state of this nation in this month of Sept., 1688." P. 34. Notice is given in the London Gazette for Dec. 11. 1687, that the lists of justices and deputy-lieutenants would be revised.

[2] The reader will find almost every thing relative to the subject in that incomparable repertory, the State Trials, xii. 1.; also some notes in the Oxford edition of Burnet.

[3] Parker's Reasons for Abrogating the Test are written in such a tone as to make his readiness to abandon the protestant side very manifest, even if the common anecdotes of him should be exaggerated.

[4] It seems, however, confirmed by Mazure, ii. 390., with the addition, that Petre, like a second Wolsey, aspired also to be chancellor. The pope, however, would not make him a bishop, against the rules of the order of jesuits to which he belonged. Id. 241. James then tried, through lord Castlemain, to get him a cardinal's hat, but with as little success.

taken as a terrible warning, this resistance to his will from the university of Oxford. That sanctuary of pure unspotted loyalty, as some would say, that sink of all that was most abject in servility, as less courtly tongues might murmur, the university of Oxford, which had but four short years back, by a solemn decree in convocation, poured forth anathemas on all who had doubted the divine right of monarchy, or asserted the privileges of subjects against their sovereigns, which had boasted in its addresses of an obedience without any restrictions or limitations, which but recently had seen a known convert to popery, and a person disqualified in other ways, installed by the chapter without any remonstrance in the deanery of Christ Church, was now the scene of a firm though temperate opposition to the king's positive command, and soon after the willing instrument of his ruin. In vain the pamphleteers, on the side of the court, upbraided the clergy with their apostasy from the principles they had so much vaunted. The imputation it was hard to repel; but, if they could not retract their course without shame, they could not continue it without destruction.[1] They were driven to extremity by the order of May 4, 1688, to read the declaration of indulgence in their churches. (Ralph, 982.) This as is well known, met with great resistance, and, by inducing the primate and six other bishops to present a petition to the king against it, brought on that famous prosecution, which, more perhaps than all his former actions, cost him the allegiance of the Anglican church. The proceedings upon the trial of those prelates are so familiar as to require no particular notice.[2] What is most worthy of remark is, that the very party who had most extolled the royal prerogative, and often in such terms as if all limitations of it were only to subsist at pleasure, became now the instrument of bringing it down within the compass and control of the law. If the king had a right to suspend the execution of statutes by proclamation, the bishops' petition might not indeed be libellous, but their disobedience and that of the clergy could not be warranted; and the principal argument both of the bar and the bench rested on the great question of that prerogative.

The king, meantime, was blindly hurrying on at the instigation of his own pride and bigotry, and of some ignorant priests; confident in the fancied obedience of the church, and in the hollow support of the dissenters, after all his wiser counsellors, the catholic peers, the nuncio, perhaps the queen herself, had grown sensible of the danger, and solicitous for temporizing measures. He had good reason to perceive that neither the fleet nor the army could be relied upon; to cashier the most rigidly protestant officers, to draft Irish troops into the regiments, to place all important commands in the hands of catholics, were difficult and even desperate measures, which rendered his designs more

[1] "Above twenty years together," says Sir Roger L'Estrange, perhaps himself a disguised catholic, in his reply to the reasons of the clergy of the diocese of Oxford against petitioning (Somers Tracts, viii. 45.), "without any regard to the nobility, gentry, and commonalty, our clergy have been publishing to the world that the king can do greater things than are done in his declaration; but now the scene is altered, and they are become more concerned to maintain their reputation even with the commonalty than with the king." See also in the same volume, p. 19. "A Remonstrance from the Church of England to both Houses of Parliament," 1685; and p. 145. "A new Test of the Church of England's Loyalty;" both, especially the latter, bitterly reproaching her members for their apostasy from former professions.

[2] See State Trials, xii. 183. D'Oyly's Life of Sancroft, i. 250.

notorious, without rendering them more feasible. It is among the most astonishing parts of this unhappy sovereign's impolicy, that he sometimes neglected, even offended, never steadily and sufficiently courted, the sole ally that could by possibility have co-operated in his scheme of government. In his brother's reign, James had been the most obsequious and unhesitating servant of the French king. Before his own accession, his first step was to implore, through Barillon, a continuance of that support and protection, without which he could undertake nothing which he had designed in favour of the catholics. He received a present of 500,000 livres with tears of gratitude; and telling the ambassador he had not disclosed his real designs to his ministers, pressed for a strict alliance with Louis, as the means of accomplishing them.[1] Yet, with a strange inconsistency, he drew off gradually from these professions, and not only kept on rather cool terms with France during part of his reign, but sometimes played a double game by treating of a league with Spain.

The secret of this uncertain policy, which has not been well known till very lately, is to be found in the king's character. James had a high sense of the dignity pertaining to a king of England, and much of the national pride as well as that of his rank. He felt the degradation of importuning an equal sovereign for money, which Louis gave less frequently and in smaller measure than it was demanded. It is natural for a proud man not to love those before whom he has abased himself. James, of frugal habits and master of a great revenue, soon became more indifferent to a French pension. Nor was he insensible to the reproach of Europe, that he was grown the vassal of France and had tarnished the lustre of the English crown.[2] Had he been himself protestant, or his subjects catholics, he would probably have given the reins to that jealousy of his ambitious neighbour, which, even in his peculiar circumstances, restrained him from the most expedient course; I mean expedient, on the hypothesis that to overthrow the civil and religious institutions of his people was to be the main object of his reign. For it was idle to attempt this without the steady co-operation of France; and those sentiments of dignity and independence, which at first sight appear to do him honour, being without any consistent magnanimity of character, served only to accelerate his ruin, and confirm the persuasion of his incapacity.[3] Even in the memorable year

[1] Fox. App. 29.; Dalrymple, 107.; Mazure, i. 396. 433.

[2] Several proofs of this occur in the course of M. Mazure's work. When the Dutch ambassador, Van Citers, showed him a paper, probably forged to exasperate him, but purporting to be written by some catholics, wherein it was said that it would be better for the people to be vassals of France than slaves of the devil, he burst out into rage. "Jamais! non, jamais! je ne ferai rien qui me puisse mettre au dessous des rois de France et d'Espagne. Vassal! vassal de la France!" s'écria-t-il avec emportement. "Monsieur! si le parlement avoit voulu, s'il vouloit encore, j'aurois porté, je porterois encore la monarchie à un degré de considération qu'elle n'a jamais eu sous aucune des rois mes prédécesseurs, et votre état y trouveroit peut-être sa propre sécurité." Vol. ii. 165. Sunderland said to Barillon, "Le roi d'Angleterre se reproche de ne pas être en Europe tout ce qu'il devoit être; et souvent il se plaint que le roi votre maitre n'a pas pour lui assez de considération." Id. 313. On the other hand, Louis was much mortified that James made so few applications for his aid. His hope seems to have been, that by means of French troops, or troops at least in his pay, he should get a footing in England; and this was what the other was too proud and jealous to permit. "Comme le roi," he said, in 1687, "ne doute pas de mon affection et du désir que j'ai de voir la religion catholique bien établie en Angleterre, il faut croire qu'il se trouve assez de force et d'autorité pour exécuter ses desseins, puisqu'il n'a pas recours à moi." P. 258.; also 174. 225. 320.

[3] James affected the same ceremonial as the king of France; and received the latter's am-

1688, though the veil was at length torn from his eyes on the verge of the precipice, and he sought in trembling the assistance he had slighted, his silly pride made him half unwilling to be rescued; and, when the French ambassador at the Hague, by a bold manœuvre of diplomacy, asserted to the States that an alliance already subsisted between his master and the king of England, the latter took offence at the unauthorised declaration, and complained privately that Louis treated him as an inferior.[1] It is probable that a more ingenuous policy in the court of Whitehall, by determining the king of France to declare war sooner on Holland, would have prevented the expedition of the prince of Orange.[2]

He continued to receive strong assurances of attachment from men of rank in England; but wanted that direct invitation to enter the kingdom with force, which he required both for his security and his justification. No men who thought much about their country's interests or their own would be hasty in venturing on so awful an enterprise. The punishment and ignominy of treason, the reproach of history, too often the sworn slave of fortune, awaited its failure. Thus Halifax and Nottingham found their conscience or their courage unequal to the crisis, and drew back from the hardy conspiracy that produced the revolution.[3] Nor, perhaps, would the seven eminent persons, whose names are subscribed to the invitation addressed on the 30th of June, 1688, to the prince of Orange, the earls of Danby, Shrewsbury, and Devonshire, lord Delamere and Lumley, the bishop of London, Mr. Henry Sidney, and admiral Russell, have committed themselves so far, if the recent birth of a prince of Wales had not made some measures of force absolutely necessary for the common interests of the nation

bassador sitting and covered. Louis only said, smiling, "Le roi mon frère est fier, mais il aime assez les pistoles de France." Mazure, i. 423. A more extraordinary trait of James's pride is mentioned by Dangeau, whom I quote from the Quarterly Review, xix. 470. After his retirement to St. Germain's, he wore violet in court mourning; which, by etiquette, was confined to the kings of France. The courtiers were a little astonished to see *solem geminum*, though not at a loss where to worship. Louis, of course, had too much magnanimity to express resentment. But what a picture of littleness of spirit does this exhibit in a wretched pauper, who could only escape by the most contemptible insignificance the charge of most ungrateful insolence!

[1] Mazure, iii. 50. James was so much out of humour at D'Avaux's interference, that he asked his confidants, "if the king of France thought he could treat him like the cardinal of Furstenburg," a creature of Louis XIV. whom he had set up for the electorate of Cologne. Id. 69. He was in short so much displeased with his own ambassador at the Hague, Skelton, for giving in to this declaration of D'Avaux, that he not only recalled, but sent him to the Tower. Burnet is therefore mistaken, p. 768., in believing that there was actually an alliance, though it was very natural that he should give credit to what an ambassador asserted in a matter of such importance. In fact, a treaty was signed between James and Louis, Sept. 13., by which some French ships were to be under the former's orders. Mazure, iii. 67.

[2] Louis continued to find money, though despising James and disgusted with him, probably with a view to his own grand interests. He should, nevertheless, have declared war against Holland in October, which must have put a stop to the armament. But he had discovered that James with extreme meanness had privately offered, about the end of September, to join the alliance against him as the only resource. This wretched action is first brought to light by M. Mazure, iii. 104. He excused himself to the king of France by an assurance that he was not acting sincerely towards Holland. Louis, though he gave up his intention of declaring war, behaved with great magnanimity and compassion towards the falling bigot.

[3] Halifax all along discouraged the invasion, pointing out that the king made no progress in his schemes. Dalrymple, passim. Nottingham said he would keep the secret, but could not be a party to a treasonable undertaking. Id. 228. Burnet, 764,; and wrote as late as July to advise delay and caution. Notwithstanding the splendid success of the opposite counsels, it would be judging too servilely by the event not to admit that they were tremendously hazardous

and the prince of Orange.[1] It cannot be said without absurdity, that James was guilty of any offence in becoming father of this child; yet it was evidently that which rendered his other offences inexpiable. He was now considerably advanced in life; and the decided resistance of his subjects made it improbable that he could do much essential injury to the established constitution during the remainder of it. The mere certainty of all reverting to a protestant heir would be an effectual guarantee of the Anglican church. But the birth of a son to be nursed in the obnoxious bigotry of Rome, the prospect of a regency under the queen, so deeply implicated, according to common report, in the schemes of this reign, made every danger appear more terrible. From the moment that the queen's pregnancy was announced, the catholics gave way to enthusiastic unrepressed exultation; and by the confidence with which they prophesied the birth of an heir, furnished a pretext for the suspicions which a disappointed people began to entertain. (Ralph, 980. Mazure, ii. 367.) These suspicions were very general; they extended to the highest ranks, and are a conspicuous instance of that prejudice which is chiefly founded on our wishes. Lord Danby, in a letter to William, of March 27., insinuates his doubt of the queen's pregnancy. After the child's birth, the seven subscribers to the association inviting the prince to come over, and pledging themselves to join him, say that not one in a thousand believe it to be the queen's; lord Devonshire separately held language to the same effect.[2] The princess Anne talked with little restraint of her suspicions, and made no scruple of imparting them to her sister.[3] Though no one can hesitate at present to acknowledge that the prince of Wales's legitimacy is out of all question, there was enough to raise a reasonable apprehension in the presumptive heir, that a party not really very scrupulous, and through religious animosity supposed to be still less so, had been induced by the undoubted prospect of advantage to draw the king, who had been wholly their slave, into one of those frauds which bigotry might call pious.[4]

The great event however of what has been emphatically denominated in the language of our public acts the Glorious Revolution stands in need of no vulgar credulity, no mistaken prejudice, for its support. It can only rest on the basis of a liberal theory of government, which looks to the public good as the great end for which positive laws and the constitutional order of states have been instituted. It cannot be

[1] The invitation to William seems to have been in debate some time before the prince of Wales's birth; but it does not follow that it would have been despatched if the queen had borne a daughter; nor do I think that it should have been.

[2] Dalrymple, 216. 228. The prince was urged in the memorial of the seven to declare the fraud of the queen's pregnancy to be one of the grounds of his expedition. He did this: and it is the only part of his declaration that is false.

[3] State Trials, xii. 151. Mary put some very sensible questions to her sister, which show her desire of reaching the truth in so important a matter. They were answered in a style which shows that Anne did not mean to lessen her sister's suspicions. Dalrymple, 305. Her conversation with lord Clarendon on this subject, after the depositions had been taken, is a proof that she had made up her mind not to be convinced. Henry Earl of Clarendon's Diary, 77. 79. State Trials, ubi supra.

[4] M. Mazure has collected all the passages in the letters of Barillon and Bonrepos to the court of France relative to the queen's pregnancy; ii. 366.; and those relative to the birth of the prince of Wales, p. 547. It is to be observed that this took place more than a month before the time expected.

defended without rejecting the slavish principles of absolute obedience, or even that pretended modification of them which imagines some extreme case of intolerable tyranny, some, as it were, lunacy of despotism, as the only plea and palliation of resistance. Doubtless the administration of James II. was not of this nature. Doubtless he was not a Caligula, or a Commodus, or an Ezzelin, or a Galeazzo Sforza, or a Christiern II. of Denmark, or a Charles IX. of France, or one of those almost innumerable tyrants whom men have endured in the wantonness of unlimited power. No man had been deprived of his liberty by any illegal warrant. No man, except in the single though very important instance of Magdalen College, had been despoiled of his property. I must also add that the government of James II. will lose little by comparison with that of his father. The judgment in favour of his prerogative to dispense with the test, was far more according to received notions of law, far less injurious and unconstitutional, than that which gave a sanction to ship-money. The injunction to read the declaration of indulgence in churches was less offensive to scrupulous men than the similar command to read the declaration of Sunday sports in the time of Charles I. Nor was any one punished for a refusal to comply with the one; while the prisons had been filled with those who had disobeyed the other. Nay, what is more, there are much stronger presumptions of the father's than of the son's intention to lay aside parliaments, and set up an avowed despotism. It is indeed amusing to observe that many, who scarcely put bounds to their eulogies of Charles I., have been content to abandon the cause of one who had no faults in his public conduct but such as seemed to have come by inheritance. The characters of the father and son were very closely similar; both proud of their judgment as well as their station, and still more obstinate in their understanding than in their purpose; both scrupulously conscientious in certain great points of conduct, to the sacrifice of that power which they had preferred to every thing else; the one far superior in relish for the arts and for polite letters, the other more diligent and indefatigable in business; the father exempt from those vices of a court to which the son was too long addicted; not so harsh perhaps or prone to severity in his temper, but inferior in general sincerity and adherence to his word. They were both equally unfitted for the condition in which they were meant to stand—the limited kings of a wise and free people, the chiefs of the English commonwealth.

The most plausible argument against the necessity of so violent a remedy for public grievances as the abjuration of allegiance to a reigning sovereign, was one that misled half the nation in that age, and is still sometimes insinuated by those whose pity for the misfortunes of the house of Stuart appears to predominate over every other sentiment which the history of the revolution should excite. It was alleged that the constitutional mode of redress by parliament was not taken away; that the king's a tempts to obtain promises of support from the electors and probably representatives showed his intention of calling one; that the writs were in fact ordered before the prince of Orange's expedition; that after the invader had reached London, James still offered to refer the terms of reconciliation with his people to a free parliament, though

he could have no hope of evading any that might be proposed; that by reversing illegal judgments, by annulling unconstitutional dispensations, by reinstating those who had been unjustly dispossessed, by punishing wicked advisers, above all, by passing statutes to restrain the excesses and cut off the dangerous prerogatives of the monarchy, (as efficacious, or more so, than the bill of rights and other measures that followed the revolution,) all risk of arbitrary power, or of injury to the established religion, might have been prevented, without a violation of that hereditary right which was as fundamental in the constitution as any of the subject's privileges. It was not necessary to enter upon the delicate problem of absolute non-resistance, or to deny that the conservation of the whole was paramount to all positive laws. The question to be proved was, that a regard to this general safety exacted the means employed in the revolution, and constituted that extremity which could alone justify such a deviation from the standard rules of law and religion.

It is evidently true that James had made very little progress, or rather experienced a signal defeat, in his endeavour to place the professors of his own religion on a firm and honourable basis. There seems the strongest reason to believe that far from reaching his end through the new parliament, he would have experienced those warm assaults on the administration, which generally distinguished the house of commons under his father and brother. But, as he was in no want of money, and had not the temper to endure what he thought the language of republican faction, we may be equally sure that a short and angry session would have ended with a more decided resolution on his side to govern in future without such impracticable counsellors. The doctrine imputed of old to lord Strafford, that, after trying the good-will of parliament in vain, a king was absolved from the legal maxims of government, was always at the heart of the Stuarts. His army was numerous, according at least to English notions; he had already begun to fill it with popish officers and soldiers; the militia, though less to be depended on, was under the command of lord and deputy lieutenants carefully selected; above all, he would at the last have recourse to France; and though the experiment of bringing over French troops was very hazardous, it is difficult to say that he might not have succeeded, with all these means, in preventing or putting down any concerted insurrection. But at last the renewal of civil bloodshed and the anarchy of rebellion seemed to be the alternative of slavery, if William had never earned the just title of our deliverer. It is still more evident that, after the invasion had taken place, and a general defection had exhibited the king's inability to resist, there could have been no such compromise as the tories fondly expected, no legal and peaceable settlement in what they called a free parliament, leaving James in the real and recognised possession of his constitutional prerogatives. Those who have grudged William III. the laurels that he won for our service are ever prone to insinuate, that his unnatural ambition would be content with nothing less than the crown, instead of returning to his country after he had convinced the king of the error of his counsels, and obtained securities for the religion and liberties of England. The hazard of the enterprise, and most hazardous it truly

was, was to have been his; the profit and advantage our own. I do not know that William absolutely expected to place himself on the throne; because he could hardly anticipate that James would so precipitately abandon a kingdom wherein he was acknowledged, and had still many adherents. But undoubtedly he must, in consistency with his magnanimous designs, have determined to place England in its natural station, as a party in the great alliance against the power of Louis XIV. To this one object of securing the liberties of Europe, and chiefly of his own country, the whole of his heroic life was directed with undeviating, undisheartened firmness. He had in view no distant prospect, when the entire succession of the Spanish monarchy would be claimed by that insatiable prince, whose renunciation at the treaty of the Pyrenees was already maintained to be invalid. Against the present aggressions and future schemes of this neighbour the league of Augsburg had just been concluded. England, a free, a protestant, a maritime kingdom, would, in her natural position, as a rival of France, and deeply concerned in the independence of the Netherlands, become a leading member of this confederacy. But the sinister attachments of the house of Stuart had long diverted her from her true interests, and rendered her councils disgracefully and treacherously subservient to those of Louis. It was therefore the main object of the prince of Orange to strengthen the alliance by the vigorous co-operation of this kingdom; and with no other view, the emperor, and even the pope, had abetted his undertaking. But it was impossible to imagine that James would have come with sincerity into measures so repugnant to his predilections and interests. What better could be expected than a recurrence of that false and hollow system which had betrayed Europe and dishonoured England under Charles II.; or rather, would not the sense of injury and thraldom have inspired still more deadly aversion to the cause of those to whom he must have ascribed his humiliation? There was as little reason to hope that he would abandon the long-cherished schemes of arbitrary power, and the sacred interests of his own faith. We must remember that, when the adherents or apologists of James II. have spoken of him as an unfortunately misguided prince, they have insinuated what neither the notorious history of those times, nor the more secret information since brought to light, will in any degree confirm. It was indeed a strange excuse for a king of such mature years, and so trained in the most diligent attention to business. That in some particular instances he acted under the influence of his confessor, Petre, is not unlikely; but the general temper of his administration, his notions of government, the object he had in view, were perfectly his own, and were pursued rather in spite of much dissuasion and many warnings, than through the suggestions of any treacherous counsellors.

Both with respect therefore to the prince of Orange and to the English nation, James II. was to be considered as an enemy whose resentment could never be appeased, and whose power consequently must be wholly taken away. It is true that, if he had remained in England, it would have been extremely difficult to deprive him of the nominal sovereignty. But in this case, the prince of Orange must have been invested, by some course or other, with all its real attribut

He undoubtedly intended to remain in this country; and could not otherwise have preserved that entire ascendancy which was necessary for his ultimate purposes. The king could not have been permitted, with any common prudence, to retain the choice of his ministers, or the command of his army, or his negative voice in laws, or even his personal liberty; by which I mean, that his guards must have been either Dutch, or at least appointed by the prince and parliament. Less than this it would have been childish to require; and this would not have been endured by any man even of James's spirit, or by the nation, when the re-action of loyalty should return, without continued efforts to get rid of an arrangement far more revolutionary and subversive of the established monarchy than the king's deposition.

In the revolution of 1688 there was an unusual combination of favouring circumstances, and some of the most important, such as the king's sudden flight, not within prior calculation, which render it no precedent for other times and occasions in point of expediency, whatever it may be in point of justice. Resistance to tyranny by overt rebellion incurs not only the risks of failure, but those of national impoverishment and confusion, of vindictive retaliation, and such aggressions (perhaps inevitable) on private right and liberty as render the name of revolution and its adherents odious. Those, on the other hand, who call in a powerful neighbour to protect them from domestic oppression, may too often expect to realise the horse of the fable, and endure a subjection more severe, permanent, and ignominious, than what they shake off. But the revolution effected by William III. united the independent character of a national act with the regularity and the coercion of anarchy which belong to a military invasion. The United Provinces were not such a foreign potentate as could put in jeopardy the independence of England; nor could his army have maintained itself against the inclinations of the kingdom, though it was sufficient to repress any turbulence that would naturally attend so extraordinary a crisis. Nothing was done by the multitude; no new men, soldiers, or demagogues had their talents brought forward by this rapid and pacific revolution; it cost no blood, it violated no right, it was hardly to be traced in the course of justice; the formal and exterior character of the monarchy remained nearly the same in so complete a regeneration of its spirit. Few nations can hope to ascend up to the sphere of a just and honourable liberty, especially when long use has made the track of obedience familiar, and they have learned to move as it were only by the clank of the chain, with so little toil and hardship. We reason too exclusively from this peculiar instance of 1688, when we hail the fearful struggles of other revolutions with a sanguine and confident sympathy. Nor is the only error upon this side. For, as if the inveterate and cankerous ills of a commonwealth could be extirpated with no loss and suffering, we are often prone to abandon the popular cause in agitated nations with as much fickleness as we embraced it, when we find that intemperance, irregularity, and confusion, from which great revolutions are very seldom exempt. These are indeed so much their usual attendants, the re-action of a self-deceived multitude is so probable a consequence, the general prospect of success in most cases so precarious, that wise and good men are

more likely to hesitate too long, than to rush forward too eagerly. Yet, "whatever be the cost of this noble liberty, we must be content to pay it to Heaven."

It is unnecessary even to mention those circumstances of this great event, which are minutely known to almost all my readers. They were all eminently favourable in their effect to the regeneration of our constitution; even one of temporary inconvenience, namely, the return of James to London, after his detention by the fishermen near Faversham. This, as Burnet has observed, and as is easily demonstrated by the writings of that time, gave a different colour to the state of affairs, and raised up a party which did not before exist, or at least was too disheartened to show itself.[1] His first desertion of the kingdom had disgusted every one, and might be construed into a voluntary cession. But his return to assume again the government put William under the necessity of using that intimidation which awakened the mistaken sympathy of a generous people. It made his subsequent flight, though certainly not what a man of courage enough to give his better judgment free play would have chosen, appear excusable and defensive. It brought out too glaringly, I mean for the satisfaction of prejudiced minds, the undeniable fact, that the two houses of convention deposed and expelled their sovereign. Thus the great schism of the Jacobites, though it must otherwise have existed, gained its chief strength; and the revolution, to which at the outset a coalition of whigs and tories had conspired, became in its final result, in the settlement of the crown upon William and Mary, almost entirely the work of the former party.

But while the position of the new government was thus rendered less secure, by narrowing the basis of public opinion whereon it stood, the liberal principles of policy which the whigs had espoused became incomparably more powerful, and were necessarily involved in the continuance of the revolution settlement. The ministers of William III. and of the house of Brunswic had no choice but to respect and countenance the doctrines of Locke, Hoadley, and Molesworth. The assertion of passive obedience to the crown grew obnoxious to the crown itself. Our new line of sovereigns scarcely ventured to hear of their hereditary right, and dreaded the cup of flattery that was drugged with poison. This was the greatest change that affected our monarchy by the fall of the house of Stuart. The laws were not so materially altered as the spirit and sentiments of the people. Hence those who look only at the former, have been prone to underrate the magnitude

[1] Some short pamphlets, written at this juncture to excite sympathy for the king, and disapprobation of the course pursued with respect to him, are in the Somers Collection, vol. ix. But this force put upon their sovereign first wounded the consciences of Sancroft and the other bishops, who had hitherto done as much as in their station they well could to ruin the king's cause and paralyse his arms. Several modern writers have endeavoured to throw an interest about James at the moment of his fall, either from a lurking predilection for all legitimately crowned heads, or from a notion that it becomes a generous historian to excite compassion for the unfortunate. There can be no objection to pitying James, if this feeling is kept unmingled with any blame of those who were the instruments of his misfortune. It was highly expedient for the good of this country, because the revolution settlement could not otherwise be attained, to work on James's sense of his deserted state by intimidation; and for that purpose the order conveyed by three of his own subjects, perhaps with some rudeness of manner, to leave Whitehall was necessary. The drift of several accounts of the revolution that may be read is to hold forth Mulgrave, Craven, Arran, and Dundee to admiration, at the expense of William and of those who achieved the great consolidation of English liberty.

of this revolution. The fundamental maxims of the constitution, both as they regard the king and the subject, may seem nearly the same; but the disposition with which they were received and interpreted was entirely different.

It was in this turn of feeling, in this change, if I may so say, of the heart, far more than in any positive statutes and improvements of the law, that I consider the revolution to have been eminently conducive to our freedom and prosperity. Laws and statutes as remedial, nay more closely limiting the prerogative than the bill of rights and act of settlement, might possibly have been obtained from James himself, as the price of his continuance on the throne, or from his family, as that of their restoration to it. But what the revolution did for us was this; it broke a spell that had charmed the nation. It cut up by the roots all that theory of indefeasible right, of paramount prerogative, which had put the crown in continual opposition to the people. A contention had now subsisted for five hundred years, but particularly during the last four reigns, against the aggressions of arbitrary power. The sovereigns of this country had never patiently endured the control of parliament; nor was it natural for them to do so, while the two houses of parliament appeared historically, and in legal language, to derive their existence as well as privileges from the crown itself. They had at their side the pliant lawyers, who held the prerogative to be uncontrollable by statutes, a doctrine of itself destructive to any scheme of reconciliation and compromise between a king and his subjects; they had the churchmen, whose casuistry denied that the most intolerable tyranny could excuse resistance to a lawful government. These two propositions could not obtain general acceptation without rendering all national liberty precarious.

It has been always reckoned among the most difficult problems in the practical science of government, to combine an hereditary monarchy with security of freedom, so that neither the ambition of kings shall undermine the people's rights, nor the jealousy of the people overturn the throne. England had already experience of both these mischiefs. And there seemed no prospect before her, but either their alternate recurrence, or a final submission to absolute power, unless by one great effort she could put the monarchy for ever beneath the law, and reduce it to an integrant portion instead of the primary source and principle of the constitution. She must reverse the favoured maxim, "A Deo rex, à rege lex;" and make the crown itself appear the creature of the law. But our ancient monarchy, strong in a possession of seven centuries, and in those high and paramount prerogatives which the consenting testimony of lawyers and the submission of parliaments had recognised, a monarchy from which the house of commons and every existing peer, though not perhaps the atistocratic order itself, derived its participation in the legislature, could not be bent to the republican theories, which have been not very successfully attempted in some modern codes of constitution. It could not be held, without breaking up all the foundations of our polity, that the monarchy emanated from the parliament, or even from the people. But by the revolution and by the act of settlement, the rights of the actual monarch, of the reigning family, were made to emanate from the parliament and the

people. In technical language, in the grave and respectful theory of our constitution, the crown is still the fountain from which law and justice spring forth. Its prerogatives are in the main the same as under the Tudors and the Stuarts; but the right of the house of Brunswick to exercise them can only be deduced from the convention of 1688.

The great advantage therefore of the revolution, as I would explicitly affirm, consists in that which was reckoned its reproach by many, and its misfortune by more; that it broke the line of succession. No other remedy could have been found, according to the temper and prejudices of those times, against the unceasing conspiracy of power. But when the very tenure of power was conditional, when the crown, as we may say, gave recognisances for its good behaviour, when any violent and concerted aggressions on public liberty would have ruined those who could only resist an inveterate faction by the arms which liberty put in their hands, the several parts of the constitution were kept in cohesion by a tie far stronger than statutes, that of a common interest in its preservation. The attachment of James to popery, his infatuation, his obstinacy, his pusillanimity, nay even the death of the duke of Gloucester, the life of the prince of Wales, the extraordinary permanence and fidelity of his party, were all the destined means through which our present grandeur and liberty, our dignity of thinking on matters of government, have been perfected. Those liberal tenets, which at the era of the revolution were maintained but by one denomination of English party, and rather perhaps on authority of not very good precedents in our history than of sound general reasoning, became in the course of the next generation almost equally the creed of the other, whose long exclusion from government taught them to solicit the people's favour; and by the time that Jacobitism was extinguished, had passed into received maxims of English politics. None at least would care to call them in question within the walls of parliament; nor have their opponents been of much credit in the paths of literature. Yet, as since the extinction of the house of Stuart's pretensions, and other events of the last half century, we have seen those exploded doctrines of indefeasible hereditary right revived under another name, and some have been willing to misrepresent the transactions of the revolution and the act of settlement as if they did not absolutely amount to a deposition of the reigning sovereign, and an election of a new dynasty by the representatives of the nation in parliament, it may be proper to state precisely the several votes, and to point out the impossibility of reconciling them to any gentler construction.

The lords spiritual and temporal, to the number of about ninety, and an assembly of all who had sat in any of king Charles's parliaments, with the lord mayor and fifty of the common council, requested the prince of Orange to take upon him the administration after the king's second flight, and to issue writs for a convention in the usual manner.[1]

[1] Parl. Hist. v. 26. The former address on the king's first quitting London, signed by the peers and bishops, who met at Guildhall, Dec. 11., did not, in express terms, desire the prince of Orange to assume the government, or to call a parliament, though it evidently tended to that result, censuring the king, and extolling the prince's conduct. Id. 19. It was signed by the archbishop, his last public act. Burnet has exposed himself to the lash of Ralph by stating this address of Dec. 11, incorrectly.

This was on the 26th of December; and the convention met on the 22nd of January. The first care was to address the prince to take the administration of affairs and disposal of the revenue into his hands, in order to give a kind of parliamentary sanction to the power he already exercised. On the 28th of January the commons, after a debate in which the friends of the late king made but a faint opposition, came to their great vote: That king James II. having endeavoured to subvert the constitution of this kingdom, by breaking the original contract between king and people, and by the advice of jesuits and other wicked persons having violated the fundamental laws, and having withdrawn himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant. They resolved unanimously the next day, that it hath been found by experience inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince. (Com. Journs.; Parl. Hist.) This vote was a remarkable triumph of the whig party, who had contended for the exclusion bill; and, on account of that endeavour to establish a principle which no one was now found to controvert, had been subjected to all the insults and reproaches of the opposite faction. The lords agreed with equal unanimity to this vote; which, though it was expressed only as an abstract proposition, led by a practical inference to the whole change that the whigs had in view. But upon the former resolution several important divisions took place. The first question put, in order to save a nominal allegiance to the late king, was, whether a regency with the administration of regal power under the style of king James II. during the life of the said king James, be the best and safest way to preserve the protestant religion and the laws of this kingdom? This was supported both by those peers who really meant to exclude the king from the enjoyment of power, such as Nottingham, its great promoter, and by those who, like Clarendon, were anxious for his return upon terms of security for their religion and liberty. The motion was lost by fifty-one to forty-nine; and this seems to have virtually decided, in the judgment of the house, that James had lost the throne.[1] The lords then resolved that there was an original contract between the king and people, by fifty-five to forty-six; a position that seems rather too theoretical, yet necessary at that time, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived. They concurred, without much debate, in the rest of the commons' vote; till they came to the clause that he had abdicated the government, for which they substituted the word "deserted." They next omitted the final and most important clause, that the throne was thereby vacant, by a majority of fifty-five to forty-one. This was owing to the party of lord Danby, who asserted a devolution of the crown on the princess of Orange. It seemed to be tacitly understood by both sides that the infant child was to be presumed spurious. This at least was a necessary supposition for the tories, who sought in the idle rumours of the time an excuse for abandoning his

[1] Somerville and several other writers have not accurately stated the question; and suppose the lords to have debated whether the throne, on the hypothesis of its vacancy, should be filled by a king or a regent. Such a mode of putting the question would have been absurd. I observe that M. Mazure has been deceived by these authorities.

right. As to the whigs, though they were active in discrediting this unfortunate boy's legitimacy, their own broad principles of changing the line of succession rendered it, in point of argument, a superfluous inquiry. The tories, who had made little resistance to the vote of abdication, when it was proposed in the commons, recovering courage by this difference between the two houses; and perhaps by observing the king's party to be stronger out of doors than it had appeared to be, were able to muster 151 voices against 282 in favour of agreeing with the lords in leaving out the clause about the vacancy of the throne.[1] There was still, however, a far greater preponderance of the whigs in one part of the convention, than of the tories in the other. In the famous conference that ensued between committees of the two houses upon these amendments, it was never pretended that the word "abdication" was used in its ordinary sense, for a voluntary resignation of the crown. The commons did not practise so pitiful a subterfuge. Nor could the lords explicitly maintain, whatever might be the wishes of their managers, that the king was not expelled and excluded as much by their own word "desertion" as by that which the lower house had employed. Their own previous vote against a regency was decisive upon this point.[2] But as abdication was a gentler term than forfeiture, so desertion appeared a still softer method of expressing the same idea. Their chief objection, however, to the former word was that it led, or might seem to lead to the vacancy of the throne, against which their principal arguments were directed. They contended that in our government there could be no interval or vacancy, the heir's right being complete by a demise of the crown; so that it would at once render the monarchy elective, if any other person were designated to the succession. The commons did not deny that the present case was one of election, though they refused to allow that the monarchy was thus rendered perpetually elective. They asked, supposing a right to descend upon the next heir, who was that heir to inherit it; and gained one of their chief advantages by the difficulty of evading this question. It was indeed evident, that, if the lords should carry their amendments, an inquiry into the legitimacy of the prince of Wales could by no means be dispensed with. Unless that could be disproved more satisfactorily than they had reason to hope, they must come back to the inconveniences of a regency, with the prospect of bequeathing interminable confusion to their posterity. For, if the descendants of James should continue in the Roman catholic religion, the nation might be placed in the ridiculous situation of acknowledging a dynasty of exiled kings, whose lawful prerogative would be withheld by another race of protestant regents. It was indeed strange to apply the provisional substitution of a regent in cases of infancy or imbecility of mind to a prince of mature age, and full capacity for the exercise of power. Upon the king's return to England, this delegated authority must cease of itself; unless supported by votes of parliament as violent and incompatible with the regular constitution as his deprivation of

[1] Parl. Hist. 61. The chief speakers on this side were old sir Thomas Clarges, brother-in-law of general Monk, who had been distinguished as an opponent of administration under Charles and James, and Mr. Finch, brother of lord Nottingham, who had been solicitor-general to Charles, but was removed in the late reign.

[2] James is called "the late king" in a resolution of the lords on Feb. 2.

the royal title, but far less secure for the subject, whom the statute of Henry VII. would shelter in paying obedience to a king de facto; while the fate of sir Henry Vane was an awful proof that no other name could give countenance to usurpation. A great part of the nation not thirty years before had been compelled by acts of parliament (13 Car. II. c. i.; 17 Car. II. c. ii.) to declare upon oath their abhorrence of that traiterous position, that arms might be taken up by the king's authority against his person or those commissioned by him, through the influence of those very tories or loyalists who had now recourse to the identical distinction between the king's natural and political capacity, for which the presbyterians had incurred so many reproaches.

In this conference, however, if the whigs had every advantage on the solid grounds of expediency, or rather political necessity, the tories were as much superior in the mere argument, either as it regarded the common sense of words, or the principles of our constitutional law. Even should we admit that an hereditary king is competent to abdicate the throne in the name of all his posterity, this could only be intended of a voluntary and formal cession, not such a constructive abandonment of his right by misconduct as the commons had imagined. The word "forfeiture" might better have answered this purpose; but it had seemed too great a violence on principles which it was more convenient to undermine than to assault. Nor would even forfeiture bear out by analogy the exclusion of an heir, whose right was not liable to be set aside at the ancestor's pleasure. It was only by recurring to a kind of paramount, and what I may call hyper-constitutional law, a mixture of force and regard to the national good, which is the best sanction of what is done in revolutions, that the vote of the commons could be defended. They proceeded not by the stated rules of the English government, but the general rights of mankind. They looked not so much to Magna Charta, as the original compact of society, and rejected Coke and Hale for Hooker and Grotius.

The house of lords, after this struggle against principles undoubtedly very novel in the discussions of parliament, gave way to the strength of circumstance and the steadiness of the commons. They resolved not to insist on their amendments to the original vote; and followed this up by a resolution, that the prince and princess of Orange shall be declared king and queen of England, and all the dominions thereunto belonging.[1] But the commons with a noble patriotism delayed to concur in this hasty settlement of the crown, till they should have completed the declaration of those fundamental rights and liberties for the sake of which alone they had gone forward with this great revolution.[2] That declaration, being at once an exposition of the mis-

[1] This was carried by sixty-two to forty-seven, according to lord Clarendon; several of the tories going over, and others who had been hitherto absent coming down to vote. Forty peers protested, including twelve bishops, out of seventeen present. Trelawney, who had voted against the regency, was one of them; but not Compton, Lloyd of St. Asaph, Crewe, Sprat, or Hall; the three former, I believe, being in the majority. Lloyd had been absent when the vote passed against a regency, out of unwillingness to disagree with the majority of his brethren; but he was entirely of Burnet's mind. The votes of the bishops are not accurately stated in most books; which has induced me to mention them here. Lords' Journals, Feb. 6.

[2] It had been resolved, Jan. 29., that before the committee proceed to fill the throne now at, they will proceed to secure our religion, laws, and liberties.

government which had compelled them to dethrone the late king, and of the conditions upon which they elected his successors, was incorporated in the final resolution to which both houses came on the 13th of February, extending the limitation of the crown as far as the state of affairs required: "That William and Mary, prince and princess of Orange, be, and be declared king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their decease the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said William prince of Orange."

Thus, to sum up the account of this extraordinary change in our established monarchy, the convention pronounced, under the slight disguise of a word unusual in the language of English law, that the actual sovereign had forfeited his right to the nation's allegiance. It swept away by the same vote the reversion of his posterity and of those who could claim the inheritance of the crown. It declared that, during an interval of nearly two months, there was no king of England; the monarchy lying, as it were, in abeyance from the 23rd of December to the 13th of February. It bestowed the crown on William, jointly with his wife indeed, but so that her participation of the sovereignty should be only in name.[1] It postponed the succession of the princess Anne during his life. Lastly, it made no provision for any future devolution of the crown in failure of issue from those to whom it was thus limited, leaving that to the wisdom of future parliaments. Yet only eight years before, nay much less, a large part of the nation had loudly proclaimed the incompetency of a full parliament, with a lawful king at its head, to alter the lineal course of succession. No whig had then openly professed the doctrine, that not only a king, but an entire royal family, might be set aside for public convenience. The notion of an original contract was denounced as a republican chimera. The deposing of

[1] See Burnet's remarkable conversation with Bentinck, wherein the former warmly opposed the settlement of the crown on the prince of Orange alone, as Halifax had suggested. But nothing in it is more remarkable than that the bishop does not perceive that this was virtually done; for it would be difficult to prove that Mary's royalty differed at all from that of a queen consort, except in having her name in the style. She was exactly in the same predicament as Philip had been during his marriage with Mary I. Her admirable temper made her acquiesce in this exclusion from power, which the sterner character of her husband demanded; and with respect to the conduct of the convention, it must be observed that the nation owed her no particular debt of gratitude, nor had she any better claim than her sister to fill a throne by election, which had been declared vacant. In fact, there was no middle course between what was done, and following the precedent of Philip, as to which Bentinck said, he fancied the prince would not like to be his wife's gentleman usher: for a divided sovereignty was a monstrous and impracticable expedient in theory, however the submissive disposition of the queen might have prevented its mischiefs. Burnet seems to have had a puzzled view of this; for he says afterwards, "It seemed to be a double-bottomed monarchy, where there were two joint sovereigns: but those who knew the queen's temper and principles had no apprehensions of divided counsels, or of a distracted government." Vol. ii. 2. The convention had not trusted to the queen's temper and principles. It required a distinct act of parliament (2 W. & M. c. 6.) to enable her to exercise the regal power during the king's absence from England.

kings was branded as the worst birth of popery and fanaticism. If other revolutions have been more extensive in their effect on the established government, few perhaps have displayed a more rapid transition of public opinion. For it cannot, I think, be reasonably doubted that the majority of the nation went along with the vote of their representatives. Such was the termination of that contest, which the house of Stuart had obstinately maintained against the liberties, and of late, against the religion of England; or rather, of that far more ancient controversy between the crown and the people which had never been wholly at rest since the reign of John. During this long period, the balance, except in a few irregular intervals, had been swayed in favour of the crown; and though the government of England was always a monarchy limited by law, though it always, or at least since the admission of the commons into the legislature, partook of the three simple forms, yet the character of a monarchy was evidently prevalent over the other parts of the constitution. But, since the revolution of 1688, and particularly from thence to the death of George II., it seems equally just to say, that the predominating character has been aristocratical; the prerogative being in some respects too limited, and in others too little capable of effectual exercise, to counterbalance the hereditary peerage, and that class of great territorial proprietors, who, in a political division, are to be reckoned among the proper aristocracy of the kingdom. This, however, will be more fully explained in the succeeding chapters, which are to terminate the present work.

CHAPTER XV.

ON THE REIGN OF WILLIAM III.

Declaration of Rights—Bill of Rights—Military Force without Consent declared Illegal—Discontent with the new Government—Its Causes—Incompatibility of the Revolution with received Principles—Character and Errors of William—Jealousy of the Whigs—Bill of Indemnity—Bill for restoring Corporations—Settlement of the Revenue—Appropriation of Supplies—Dissatisfaction of the King—No Republican Party in Existence—William employs Tories in Ministry—Intrigues with the late King—Schemes for his Restoration—Attainder of Sir John Fenwick—Ill Success of the War—Its Expenses—Treaty of Ryswick—Jealousy of the Commons—Army reduced—Irish Forfeitures resumed—Parliamentary Inquiries—Treaties of Partition—Improvements in Constitution under William—Bill for Triennial Parliaments—Law of Treason—Statute of Edward III.—Its constructive Interpretation—Statute of William III.—Liberty of the Press—Law of Libel—Religious Toleration—Attempt at Comprehension—Schism of the Non-jurors—Laws against Roman Catholics—Act of Settlement—Limitations of Prerogative contained in it—Privy Council superseded by a Cabinet—Exclusion of Placemen and Pensioners from Parliament—Independence of Judges—Oath of Abjuration.—pp. 676–738.

THE Revolution is not to be considered as a mere effort of the nation

on a pressing emergency to rescue itself from the violence of a particular monarch; much less as grounded upon the danger of the Anglican church, its emoluments, and dignities, from the bigotry of a hostile religion. It was rather the triumph of those principles which, in the language of the present day, are denominated liberal or constitutional, over those of absolute monarchy, or of monarchy not effectually controlled by stated boundaries. It was the termination of a contest between the regal power and that of parliament, which could not have been brought to so favourable an issue by any other means. But, while the chief renovation in the spirit of our government was likely to spring from breaking the line of succession, while no positive enactments would have sufficed to give security to freedom with the legitimate race of Stuart on the throne, it would have been most culpable, and even preposterous, to permit this occasion to pass by, without asserting and defining those rights and liberties which the very indeterminate nature of the king's prerogative at common law, as well as the unequivocal extension it had lately received, must continually place in jeopardy. The house of lords indeed, as I have observed in the last chapter, would have conferred the crown on William and Mary, leaving the redress of grievances to future arrangement; and some eminent lawyers in the commons, Maynard and Pollexfen, seem to have had apprehensions of keeping the nation too long in a state of anarchy. (Parl. Hist. v. 54.) But the great majority of the commons wisely resolved to go at once to the root of the nation's grievances, and show their new sovereign that he was raised to the throne for the sake of those liberties, by violating which his predecessor had forfeited it.

The declaration of rights presented to the prince of Orange by the marquis of Halifax, as speaker of the lords, in the presence of both houses, on the 18th of February, consists of three parts: a recital of the illegal and arbitrary acts committed by the late king, and of their consequent vote of abdication; a declaration, nearly following the words of the former part, that such enumerated acts are illegal; and a resolution, that the throne shall be filled by the prince and princess of Orange, according to the limitations mentioned in the last chapter. Thus the declaration of rights was indissolubly connected with the revolution settlement, as its motive and its condition.

The lords and commons in this instrument declare: That the pretended power of suspending laws, and the execution of laws, by regal authority without consent of parliament, is illegal; That the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal; That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious; That levying of money for or to the use of the crown, by pretence of prerogative without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal; That it is the right of the subjects to petition the king, and that all commitments or prosecutions for such petitions are illegal; That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is illegal; That the subjects which are protestants may have arms for their defence suit

able to their condition, and as allowed by law; That elections of members of parliament ought to be free; That the freedom of speech or debates, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament; That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; That juries ought to be duly impannelled and returned, and that jurors which pass upon men in trials of high treason ought to be freeholders; That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void; And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently. (Parl. Hist. v. 108.)

This declaration was, some months afterwards, confirmed by a regular act of the legislature in the bill of rights, which establishes at the same time the limitation of the crown according to the vote of both houses, and adds the important provision; That all persons who shall hold communion with the church of Rome, or shall marry a papist, shall be excluded, and for ever incapable to possess, inherit, or enjoy the crown and government of this realm; and in all such cases, the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. This was as near an approach to a generalisation of the principle of resistance as could be admitted with any security for public order.

The bill of rights contained only one clause extending rather beyond the propositions laid down in the declaration. This relates to the dispensing power, which the lords had been unwilling absolutely to condemn. They softened the general assertion of its illegality sent up from the other house, by inserting the words "as it has been exercised of late." (Journ. 11. 12. Feb. 1688–9.) In the bill of rights therefore a clause was introduced, that no dispensation by non obstante to any statute should be allowed, except in such cases as should be specially provided for by a bill to be passed during the present session. This reservation went to satisfy the scruples of the lords, who did not agree without difficulty to the complete abolition of a prerogative, so long recognised, and in many cases so convenient. (Parl. Hist. 345.) But the palpable danger of permitting it to exist in its indefinite state, subject to the interpretation of time-serving judges, prevailed with the commons over this consideration of conveniency; and though in the next parliament the judges were ordered by the house of lords to draw a bill for the king's dispensing in such cases wherein they should find it necessary, and for abrogating such laws as had been usually dispensed with and were become useless, the subject seems to have received no further attention. (Lords' Journ. 22nd Nov. 1689.)

Except in this article of the dispensing prerogative, we cannot say, on comparing the bill of rights with what is proved to be the law by statutes, or generally esteemed to be such on the authority of our best writers, that it took away any legal power of the crown, or enlarged the limits of popular and parliamentary privilege. The most questionable proposition, though at the same time one of the most important, was that which asserts the illegality of a standing army in time of peace, unless with consent of parliament. It seems difficult to perceive

in what respect this infringed on any private man's right, or by what clear reason (for no statute could be pretended) the king was debarred from inlisting soldiers by voluntary contract for the defence of his dominions, especially after an express law had declared the sole power over the militia, without giving any definition of that word, to reside in the crown. This had never been expressly maintained by Charles II.'s parliaments; though the general repugnance of the nation to what was certainly an innovation might have provoked a body of men, who did not always measure their words, to declare its illegality.[1] It was however at least unconstitutional, by which, as distinguished from illegal, I mean a novelty of much importance, tending to endanger the established laws. And it is manifest that the king could never inflict penalties by martial law, or generally by any other course, on his troops, nor quarter them on the inhabitants, nor cause them to interfere with the civil authorities; so that, even if the proposition so absolutely expressed may be somewhat too wide, it still should be considered as virtually correct.[2] But its distinct assertion in the bill of rights put a more essential restraint on the monarchy, and rendered it in effect for ever impossible to employ any direct force or intimidation against the established laws and liberties of the people.

[1] The guards retained out of the old army disbanded at the king's return have been already mentioned to have amounted to about 5000 men; though some assert their number at first to have been considerably less. No objection seems to have been made at the time to the continuance of these regiments. But in 1667, on the insult offered to the coasts by the Dutch fleet, a great panic arising, 12,000 fresh troops were hastily levied. The commons, on July 25., came to an unanimous resolution, that his majesty be humbly desired by such members as are his privy council, that when a peace is concluded, the new-raised forces be disbanded. The king four days after, in a speech to both houses, said, "he wondered what one thing he had done since his coming into England, to persuade any sober person that he did intend to govern by a standing army; he said he was more an Englishman than to do so. He desired for as much as concerned him, to preserve the laws," &c. Parl. Hist. iv. 363. Next session the two houses thanked him for having disbanded the late raised forces. Id. 369. But in 1673, during the second Dutch war, a considerable force having been levied, the house of commons, after a warm debate, resolved, Nov. 3., that a standing army was a grievance. Id 604. And on Feb. following, that the continuing of any standing forces in this nation, other than the militia, is a great grievance and vexation to the people; and that this house do humbly petition his majesty to cause immediately to be disbanded that part of them that were raised since Jan. 1. 1663. Id. 665. This was done not long afterwards; but early in 1678, on the pretext of entering into a war with France, he suddenly raised an army of 20,000 men or more according to some accounts, which gave so much alarm to the parliament, that they would only vote supplies on condition that these troops should be immediately disbanded. Id. 985. The king however employed the money without doing so; and maintained in the next session, that it had been necessary to keep them on foot; intimating at the same time that he was now willing to comply, if the house thought it expedient to disband the troops; which they accordingly voted with unanimity to be necessary for the safety of his majesty's person and preservation of the peace of the government, Nov. 25. Id. 1049. James showed in his speech to parliament, Nov. 9. 1685, that he intended to keep on foot a standing army. Id. 1371. But though that house of commons was very differently composed from those in his brother's reign, and voted as large a supply as the king required, they resolved that a bill be brought in to render the militia more useful; an oblique and timid hint of their disapprobation of a regular force, against which several members had spoken.

I do not find that any one, even in debate, goes the length of denying that the king might by his prerogative maintain a regular army; none at least of the resolutions in the commons can be said to have that effect.

[2] It is expressly against the petition of right, to quarter troops on the citizens, or to inflict any punishment by martial law. No court martial, in fact, can have any coercive jurisdiction except by statute; unless we should resort to the old tribunal of the constable and marshal. And that this was admitted, even in bad times, we may learn by an odd case in sir Thomas Jones's Reports, 147. (Pasch. 33. Car. II. 1681.) An action was brought for assault and false imprisonment. The defendant pleaded that he was lieutenant-governor of the isle of Scilly, and that the plaintiff was a soldier belonging to the garrison, and that it was the ancient custom of the castle, that if any soldier refused to render obedience, the governor might punish him

A revolution so thoroughly remedial, and accomplished with so little cost of private suffering, so little of angry punishment or oppression of the vanquished, ought to have been hailed with unbounded thankfulness and satisfaction. The nation's deliverer and chosen sovereign, in himself the most magnanimous and heroic character of that age, might have expected no return but admiration and gratitude. Yet this was very far from being the case. In no period of time under the Stuarts were public discontent and opposition of parliament more prominent than in the reign of William III.; and that high souled prince enjoyed far less of his subjects' affection than Charles II. No part of our history perhaps is read upon the whole with less satisfaction than these thirteen years, during which he sat upon his elective throne. It will be sufficient for me to sketch generally the leading causes, and the errors both of the prince and people, which hindered the blessings of the revolution from being duly appreciated by its contemporaries.

The votes of the two houses, that James had abdicated, or in plainer words forfeited, his royal authority, that the crown was vacant, that one out of the regular line of succession should be raised to it, were so untenable by any known law, so repugnant to the principles of the established church, that a nation accustomed to think upon matters of government only as lawyers and churchmen dictated, could not easily reconcile them to its preconceived notions of duty. The first burst of resentment against the late king was mitigated by his fall; compassion, and even confidence, began to take place of it; his adherents—some denying or extenuating the faults of his administration, others more artfully representing them as capable of redress by legal measures—having recovered from their consternation, took advantage of the necessary delay before the meeting of the convention, and of the time consumed in its debates, to publish pamphlets and circulate rumours in his behalf.[1] Thus at the moment when William and Mary were proclaimed (though it is highly probable that a majority of the kingdom sustained the bold votes of its representatives), there was yet a very powerful minority who believed the constitution to be most violently shaken, if not irretrievably destroyed, and the rightful sovereign to have been excluded by usurpation. The clergy were moved by pride and shame, by the just apprehension that their influence over the people

by imprisonment for a reasonable time; which he had therefore done. The plaintiff demurred and had judgment in his favour. By demurring, he put it to the court to determine whether this plea, which is obviously fabricated in order to cover the want of any general right to maintain discipline in this manner, were valid in point of law; which they decided, as it appears, in the negative.

In the next reign, however, an attempt was made to punish deserters capitally, not by a court martial, but on the authority of an ancient act of parliament. Chief-justice Herbert is said to have resigned his place in the king's bench rather than come into this. Wright succeeded him; and two deserters, having been convicted, were executed in London. Ralph, 961. I cannot discover that there was any thing illegal in the proceeding; and therefore question a little Herbert's motive. See 3 Inst. 96.

[1] See several in the Somers Tracts, vol. x. One of these, a Letter to a Member of the Convention, by Dr. Sherlock, is very ably written, and puts all the consequences of a change of government, as to popular dissatisfaction, &c., much as they turned out, though of course failing to show that a treaty with the king would be less open to objection. Sherlock declined for a time to take the oaths; but complying afterwards, and writing in vindication, or at least excuse of the revolution, incurred the hostility of the Jacobites, and impaired his own reputation by so interested a want of consistency, for he had been the most eminent champion of passive obedience. Even the distinction he found out, of the lawfulness of allegiance to a king de facto, was contrary to his former doctrine.

would be impaired, by jealousy or hatred of the nonconformists, to deprecate so practical a confutation of the doctrines they had preached, especially when an oath of allegiance to their new sovereign came to be imposed; and they had no alternative but to resign their benefices, or wound their reputation and consciences by submission upon some casuistical pretext. (1 W. & M. c. 8.) Eight bishops, including the primate and several of those who had been foremost in the defence of the church during the late reign, with about four hundred clergy, some of them highly distinguished, chose the more honourable course of refusing the new oaths; and thus began the schism of the non-jurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William III. and George I. as the false submission of less sincere men.[1]

It seems undeniable that the strength of this Jacobite faction sprung from the want of apparent necessity for the change of government. Extreme oppression produces an impetuous tide of resistance, which bears away the reasonings of the casuists. But the encroachments of James II., being rather felt in prospect than much actual injury, left men in a calmer temper, and disposed to weigh somewhat nicely the nature of the proposed remedy. The revolution was, or at least seemed to be, a case of political expediency; and expediency is always a matter of uncertain argument. In many respects it was far better conducted, more peaceably, more moderately, with less passion and severity towards the guilty, with less mixture of democratic turbulence, with less innovation on the regular laws, than if it had been that extreme case of necessity which some are apt to require. But it was

[1] The necessity of excluding men so conscientious, and several of whom had very recently sustained so conspicuously the brunt of the battle against king James, was very painful; and motives of policy, as well as generosity, were not wanting in favour of some indulgence towards them. On the other hand, it was dangerous to admit such a reflection on the new settlement, as would be cast by its enemies, if the clergy, especially the bishops, should be excused from the oath of allegiance. The house of lords made an amendment in the act requiring this oath, dispensing with it in the case of ecclesiastical persons, unless they should be called upon by the privy-council. This, it was thought, would furnish a security for their peaceable demeanour, without shocking the people and occasioning a dangerous schism. But the commons resolutely opposed this amendment, as an unfair distinction, and derogatory to the king's title. Parl. Hist. 218. Lord's Journ. 17 April, 1689. The clergy, however, had six months more time allowed them, in order to take the oath, than the possessors of lay offices.

Upon the whole, I think the reasons for deprivation greatly preponderated. Public prayers for the king by name form part of our liturgy; and it was surely impossible to dispense with the clergy's reading them, which was as obnoxious as the oath of allegiance. Thus the beneficed priests must have been excluded; and it was hardly required to make an exception for the sake of a few bishops, even if difficulties of the same kind would not have occurred in the exercise of their jurisdiction, which hangs upon, and has a perpetual reference to the supremacy of the crown.

The king was empowered to reserve a third part of the value of their benefices to any twelve of the recusant clergy. 1 W. & M. c. 8. s. 16. But this could only be done at the expense of their successors; and the behaviour of the non-jurors, who strained every nerve in favour of the dethroned king, did not recommend them to the government. The deprived bishops, though many of them through their late behaviour were deservedly esteemed, cannot be reckoned among the eminent characters of our church for learning or capacity. Sancroft, the most distinguished of them, had not made any remarkable figure; and none of the rest had any pretensions to literary credit. Those who filled their places were incomparably superior. Among the non-juring clergy a certain number were considerable men; but, upon the whole, the well-affected part of the church, not only at the revolution but for fifty years afterwards, contained by far its most useful and able members. Yet the effect of this expulsion was highly unfavourable to the new government; and it required all the influence of a latitudinarian school of divinity, led by Locke, which was very strong among the laity under William, to counteract it.

obtained on this account with less unanimity and heartfelt concurrence of the entire nation.

The demeanour of William, always cold and sometimes harsh, his foreign origin (a sort of crime in English eyes) and foreign favourites; the natural and almost laudable prejudice against one who had risen by the misfortunes of a very near relation, conspired with a desire of power not very judiciously displayed by him, to keep alive this disaffection; and the opposite party, regardless of all the decencies of political lying, took care to aggravate it by the vilest calumnies against one, who, though not exempt from errors, must be accounted the greatest man of his own age. It is certain that his government was in very considerable danger for three or four years after the revolution, and even to the peace of Ryswick. The change appeared so marvellous, and contrary to the bent of men's expectation, that it could not be permanent. Hence he was surrounded by the timid and the treacherous; by those who meant to have merits to plead after a restoration, and those who meant at least to be secure. A new and revolutionary government is seldom fairly dealt with. Mankind, accustomed to forgive almost every thing in favour of legitimate prescriptive power, exact an ideal faultlessness from that which claims allegiance on the score of its utility. The personal failings of its rulers, the negligences of their administration, even the inevitable privations and difficulties which the nature of human affairs or the misconduct of their predecessors create, are imputed to them with invidious minuteness. Those who deem their own merit unrewarded, become always a numerous and implacable class of adversaries; those whose schemes of public improvement have not been followed, think nothing gained by the change, and return to a restless censoriousness in which they had been accustomed to place delight. With all these it was natural that William should have to contend; but we cannot in justice impute all the unpopularity of his administration to the disaffection of one party, or the fickleness and ingratitude of another. It arose in no slight degree from errors of his own.

The king had been raised to the throne by the vigour and zeal of the whigs; but the opposite party were so nearly upon an equality in both houses that it would have been difficult to frame his government on an exclusive basis. It would also have been highly impolitic, and, with respect to some few persons, ungrateful, to put a slight upon those who had an undeniable majority in the most powerful classes. William acted, therefore, on a wise and liberal principle in bestowing offices of trust on lord Danby, so meritorious in the revolution, and on lord Nottingham, whose probity was unimpeached; while he gave the whigs, as was due, a decided preponderance in his council. Many of them, however, with that indiscriminating acrimony which belongs to all factions, could not endure the elevation of men who had complied with the court too long, and seemed by their tardy opposition (Burnet. Ralph, 174. 179.) to be rather the patriots of the church than of civil liberty. They remembered that Danby had been impeached as a corrupt and dangerous minister; that Halifax had been involved, at least by holding a confidential office at the time, in the last and worst part of Charles's reign. They saw Godolphin, who had concurred in

the commitment of the bishops, and every other measure of the late king, still in the treasury; and, though they could not reproach Nottingham with any misconduct, were shocked that his conspicuous opposition to the new settlement should be rewarded with the post of secretary of state. The mismanagement of affairs in Ireland during 1689, which was very glaring, furnished specious grounds for suspicion that the king was betrayed.[1] It is probable that he was so, though not at that time by the chiefs of his ministry. This was the beginning of that dissatisfaction with the government of William, on the part of those who had the most zeal for his throne, which eventually became far more harassing than the conspiracies of his real enemies. Halifax gave way to the prejudices of the commons, and retired from power. These prejudices were no doubt unjust, as they respected a man so sound in principle, though not uniform in conduct, and who had withstood the arbitrary maxims of Charles and James in that cabinet, of which he unfortunately continued too long a member. But his fall is a warning to English statesmen, that they will be deemed responsible to their country for measures which they countenance by remaining in office, though they may resist them in council.

The same honest warmth which impelled the whigs to murmur at the employment of men sullied by their compliance with the court made them unwilling to concur in the king's desire of a total amnesty. They retained the bill of indemnity in the commons; and excepting some by name, and many more by general clauses, gave their adversaries a pretext for alarming all those whose conduct had not been irreproachable. Clemency is indeed for the most part the wisest, as well as the most generous policy; yet it might seem dangerous to pass over with unlimited forgiveness that servile obedience to arbitrary power, especially in the judges, which, as it springs from a base motive, is best controlled by the fear of punishment. But some of the late king's instruments had fled with him, others were lost and ruined; it was better to follow the precedent set at the restoration, than to give them a chance of regaining public sympathy by a prosecution out of the regular course of law.[2] In one instance, the expulsion of sir Robert Sawyer from the house, the majority displayed a just resentment against one of the most devoted adherents of the prerogative, so long as civil liberty alone was in danger. Sawyer had been latterly very conspicuous in defence of the church; and it was expedient to let the nation see that the days of Charles II. were not entirely forgotten.[3] Nothing

[1] The parliamentary debates are full of complaints as to the mismanagement of all things in Ireland. These might be thought hasty or factious; but marshal Schomberg's letters to the king yield them strong confirmation. Dalrymple, App. 26, &c. William's resolution to take the Irish war on himself saved not only that country but England. Our own constitution was won on the Boyne. The star of the house of Stuart grew pale for ever on that illustrious day, when James displayed again the pusillanimity which had cost him his English crown. Yet the best friends of William dissuaded him from going into Ireland, so imminent did the peril appear at home. Dalrymple, Id. 97. "Things," says Burnet, "were in a very ill disposition towards a fatal turn."

[2] See the debates on this subject in the Parl. Hist. which is a transcript from Anchitel Grey. The whigs, or at least some hot-headed men among them, were certainly too much actuated by a vindictive spirit, and consumed too much time on this necessary bill.

[3] The prominent instance of Sawyer's delinquency, which caused his expulsion, was his refusal of a writ of error to sir Thomas Armstrong. Parl. Hist. 516. It was notorious that Armstrong suffered by a legal murder; and an attorney-general in such a case could not be

was concluded as to the indemnity in this parliament; but in the next, William took the matter into his own hands by sending down an act of grace.

I scarcely venture, at this distance from the scene, to pronounce an opinion as to the clause introduced by the whigs into a bill for restoring corporations, which excluded for the space of seven years all who had acted or even concurred in surrendering charters for municipal offices of trust. This was no doubt intended to maintain their own superiority by keeping the church or tory faction out of corporations. It evidently was not calculated to assuage the prevailing animosities. But on the other hand, the cowardly submissiveness of the others to the quo warrantos seemed at least to deserve this censure; and the measure could by no means be put on a level in point of rigour with the corporation act of Charles II. As the dissenters, unquestioned friends of the revolution, had been universally excluded by that statute, and the tories had lately been strong enough to prevent their re-admission, it was not unfair for the opposite party, or rather for the government, to provide some security against men, who, in spite of their oaths of allegiance, were not likely to have thoroughly abjured their former principles. This clause, which modern historians generally condemn as oppressive, had the strong support of Mr. Somers, then solicitor-general. It was, however, lost through the court's conjunction with the tories in the lower house, and the bill itself fell to the ground in the upper; so that those who had come into corporations by very ill means retained their power, to the great disadvantage of the revolution party; as the next elections made appear.[1]

But if the whigs behaved in these instances with too much of that passion which, though offensive and mischievous in its excess, is yet almost inseparable from patriotism and incorrupt sentiments in so

reckoned as free from personal responsibility as an ordinary advocate who maintains a cause for his fee. The first resolution had been to give reparation out of the estates of the judges and prosecutors to Armstrong's family; which was, perhaps rightly, abandoned.

The house of lords, who, having a power to examine upon oath, are supposed to sift the truth in such inquiries better than the commons, were not remiss in endeavouring to bring the instruments of Stuart tyranny to justice. Besides the committee appointed on the very second day of the convention, 23 Jan. 1689, to investigate the supposed circumstances of suspicion as to the death of lord Essex, (a committee renewed afterwards, and formed of persons by no means likely to have abandoned any path that might lead to the detection of guilt in the late king,) another was appointed in the second session of the same parliament (Lords' Journs. 2 Nov. 1689) "to consider who were the advisers and prosecutors of the *murders* of lord Russell, col. Sidney, Armstrong, Cornish, &c., and who were the advisers of issuing out writs of quo warrantos against corporations, and who were their regulators, and also who were the public assertors of the dispensing power." The examinations taken before this committee are printed in the Lords' Journs. 20 Dec. 1699; and there certainly does not appear any want of zeal to convict the guilty. But neither the law nor the proofs would serve them. They could establish nothing against Dudley North, the tory sheriff of 1683, except that he had named lord Russell's panel himself; which, though irregular and doubtless ill-designed, had unluckily a precedent in the conduct of the famous whig sheriff, Slingsby Bethell; a man who, like North, though on the opposite side, cared more for his party than for decency and justice. Lord Halifax was a good deal hurt in character by this report; and never made a considerable figure afterwards. Burnet, 34. His mortification led him to engage in an intrigue with the late king, which was discovered; yet, I suspect that, with his usual versatility, he again abandoned that cause before his death. Ralph. 467. The act of grace (2 W. & M. c. 10.) contained a small number of exceptions, too many indeed for its name; but probably there would have been difficulty in prevailing on the houses to pass it generally: and no one was ever molested afterwards on account of his conduct before the revolution.

[1] Parl. Hist. 508. et post. Journals, 2nd and 10th Jan. 1689, 1690. Burnet's account is confused and inaccurate, as is very commonly the case: he trusted, I believe, almost entirely to his memory. Ralph and Somerville are scarce ever candid towards the whigs in this reign.

numerous an assembly as the house of commons, they amply redeemed their glory by what cost them the new king's favour, their wise and admirable settlement of the revenue.

The first parliament of Charles II. had fixed on 1,200,000*l.* as the ordinary revenue of the crown, sufficient in times of no peculiar exigency for the support of its dignity and for the public defence. For this they provided various resources; the hereditary excise on liquors granted in lieu of the king's feudal rights, other excise and custom duties granted for his life, the post-office, the crown lands, the tax called hearth money, or two shillings for every house, and some of smaller consequence. These in the beginning of that reign fell short of the estimate; but before its termination, by the improvement of trade and stricter management of the customs, they certainly exceeded that sum. For the revenue of James from these sources, on an average of the four years of his reign, amounted to 1,500,964*l.*; to which something more than 400,000*l.* is to be added for the produce of duties imposed for eight years by his parliament of 1685. (Parl. Hist. 150.)

William appears to have entertained no doubt that this great revenue, as well as all the power and prerogative of the crown, became vested in himself as king of England, or at least ought to be instantly settled by parliament according to the usual method.[1] There could indeed be no pretence for disputing his right to the hereditary excise, though this seems to have been questioned in debate; but the commons soon displayed a considerable reluctance to grant the temporary revenue for the king's life. This had been done for several centuries in the first parliament of every reign. But the accounts for which they called on this occasion exhibited so considerable an increase of the receipts on one hand, so alarming a disposition of the expenditure on the other, that they deemed it expedient to restrain a liberality, which was not only likely to go beyond their intention, but to place them, at least in future times, too much within the power of the crown. Its average expenses appeared to have been 1,700,000*l.* Of this 610,000*l.* was the charge of the late king's army, and 83,493*l.* of the ordnance. Nearly 90,000*l.* was set under the suspicious head of secret service, imprested to Mr. Guy, secretary of the treasury. (Parl. Hist. 187.) Thus it was evident that far from sinking below the proper level, as had been the general complaint of the court in the Stuart reigns, the revenue was greatly and dangerously above it; and its excess might either be consumed in unnecessary luxury, or diverted to the worse purposes of despotism and corruption. They had indeed just declared a standing army to be illegal. But there could be no such security for the observance of this declaration as the want of means in the crown to maintain one. Their experience of the interminable contention about supply, which had been fought with various success between the kings of England and their parliaments for some hundred years, dic-

[1] Burnet, 13. Ralph, 138. 194. Some of the lawyers endeavoured to persuade the house that the revenue having been granted to James for his life, devolved to William during the natural life of the former; a technical subtlety against the spirit of the grant. Somers seems not to have come into this; but it is hard to collect the sense of speeches from Grey's memoranda. Parl. Hist. 139 It is not to be understood that the tories universally were in favour of a grant for life, and the whigs against it. But as the latter were the majority, it was in their power, speaking of them as a party, to have carried the measure.

tated a course to which they wisely and steadily adhered, and to which perhaps above all other changes at this revolution the augmented authority of the house of commons must be ascribed.

They began by voting that 1,200,000*l.* should be the annual revenue of the crown in time of peace; and that one half of this should be appropriated to the maintenance of the king's government and royal family, or what is now called the civil list, the other to the public defence and contingent expenditure. (Parl. Hist. 193.) The breaking out of an eight years' war rendered it impossible to carry into effect these resolutions as to the peace establishment: but they did not lose sight of their principle, that the king's regular and domestic expenses should be determined by a fixed annual sum, distinct from the other departments of public service. They speedily improved upon their original scheme of a definite revenue, by taking a more close and constant superintendence of these departments, the navy, army, and ordnance. Estimates of the probable expenditure were regularly laid before them, and the supply granted was strictly appropriated to each particular service.

This great and fundamental principle, as it has long been justly considered, that the money voted by parliament is appropriated, and can only be applied, to certain specified heads of expenditure, was introduced, as I have before mentioned, in the reign of Charles II., and generally, though not in every instance, adopted by his parliament. The unworthy house of commons that sat in 1685, not content with a needless augmentation of the revenue, took credit with the king for not having appropriated their supplies. But from the revolution it has been the invariable usage. The lords of the treasury, by a clause annually repeated in the appropriation act of every session, are forbidden, under severe penalties, to order by their warrant any monies in the exchequer, so appropriated, from being issued for any other service, and the officers of the exchequer to obey any such warrant. This has given the house of commons so effectual a control over the executive power, or, more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for. In time of war, or in circumstances that may induce war, it has not been very uncommon to deviate a little from the rule of appropriation, by a grant of considerable sums on a vote of credit which the crown is thus enabled to apply at its discretion during the recess of parliament; and we have had also too frequent experience, that the charges of public service have not been brought within the limits of the last year's appropriation. But the general principle has not perhaps been often transgressed without sufficient reason; and a house of commons would be deeply responsible to the country, if through supine confidence it should abandon that high privilege which has made it the arbiter of court factions, and the regulator of foreign connexions. It is to this transference of the executive government (for the phrase is hardly too strong) from the crown to the two houses of parliament, and especially the commons, that we owe the proud attitude which England has maintained since the revolution, so extra-

ordinarily dissimilar, in the eyes of Europe, to her condition under the Stuarts. The supplies meted out with niggardly caution by former parliaments to sovereigns whom they could not trust, have flowed with redundant profuseness, when they could judge of their necessity and direct their application. Doubtless the demand has always been fixed by the ministers of the crown, and its influence has retrieved in some degree the loss of authority; but it is still true that no small portion of the executive power, according to the established laws and customs of our government, has passed into the hands of that body, which prescribes the application of the revenue, as well as investigates at its pleasure every act of the administration.[1]

The convention parliament continued the revenue, as it already stood, until December, 1690.[2] Their successors complied so far with the king's expectation as to grant the excise duties, besides those that were hereditary, for the lives of William and Mary, and that of the survivor.[3] The customs they only continued for four years. They provided extraordinary supplies for the conduct of the war on a scale of armament, and consequently of expenditure, unparalleled in the annals of England. But the hesitation, and, as the king imagined, the distrust they had shown in settling the ordinary revenue, sunk deep into his mind, and chiefly alienated him from the whigs, who were stronger and more conspicuous than their adversaries in the two sessions of 1689. If we believe Burnet, he felt so indignantly what appeared a systematic endeavour to reduce his power below the ancient standard of the monarchy, that he was inclined to abandon the government, and leave the nation to itself. He knew well, as he told the bishop, what was to be alleged for the two forms of government, a monarchy and a commonwealth, and would not determine which was preferable; but of all forms he thought the worst was that of a monarchy without the necessary powers. (Burnet, 35.)

The desire of rule in William III. was as magnanimous and public-spirited as ambition can ever be in a human bosom. It was the consciousness not only of having devoted himself to a great cause, the security of Europe, and especially of Great Britain and Holland, against unceasing aggression, but of resources in his own firmness and sagacity which no other person possessed. A commanding force, a copious revenue, a supreme authority in councils, were not sought, as by the crowds of kings, for the enjoyment of selfish vanity and covetousness, but as the only sure instruments of success in his high calling, in the race of heroic enterprise which Providence had appointed for the elect champion of civil and religious liberty. We

[1] Hatsell's Precedents, iii. 80. et alibi. Hargrave's Juridical Arguments, i. 394.

[2] 1 W. & M. sess. 2. c. 2. This was intended as a provisional act "for the preventing all disputes and questions concerning the collecting, levying, and assuring the public revenue due and payable in the reigns of the late kings Charles II. and James II., whilst the better settling the same is under the consideration of the present parliament."

[3] 2 W. & M. c. 3. As a mark of respect, no doubt, to the king and queen, it was provided that, if both should die, the successor should only enjoy this revenue of excise till Dec. 1693. In the debate on this subject in the new parliament, the tories, except Seymour, were for settling the revenue during the king's life; but many whigs spoke on the other side. Parl. Hist. 552. The latter justly urged that the amount of the revenue ought to be well known before they proceed to settle it for an indefinite time. The tories, at that time, had great hopes of the king's favour, and took this method of securing it.

can hardly wonder that he should not quite render justice to the motives of those who seemed to impede his strenuous energies; that he should resent as ingratitude those precautions against abuse of power by him, the recent deliverer of the nation, which it had never called for against those who had sought to enslave it.

But reasonable as this apology may be, it was still an unhappy error of William that he did not sufficiently weigh the circumstances which had elevated him to the English throne, and the alteration they had inevitably made in the relations between the crown and the parliament. Chosen upon the popular principle of general freedom and public good, on the ruins of an ancient hereditary throne, he could expect to reign on no other terms than as the chief of a commonwealth, with no other authority than the sense of the nation and of parliament deemed congenial to the new constitution. The debt of gratitude to him was indeed immense, and not sufficiently remembered; but it was due for having enabled the nation to regenerate itself, and to place barriers against future assaults, to provide securities against future mis-government. No one could seriously assert that James II. was the only sovereign of whom there had been cause to complain. In almost every reign, on the contrary, which our history records, the innate love of arbitrary power had produced more or less of oppression. The revolution was chiefly beneficial as it gave a stronger impulse to the desire of political liberty, and rendered it more extensively attainable. It was certainly not for the sake of replacing James by William with equal powers of doing injury, that the purest and wisest patriots engaged in that cause; but as the sole means of making a royal government permanently compatible with freedom and justice. The bill of rights had pretended to do nothing more than stigmatise some recent proceedings: were the representatives of the nation to stop short of other measures because they seemed novel and restrictive of the crown's authority, when for the want of them the crown authority had nearly freed itself from all restriction? Such was their true motive for limiting the revenue, and such the ample justification of those important statutes enacted in the course of this reign, which the king, unfortunately for his reputation and peace of mind too jealously resisted.

It is by no means unusual to find mention of a commonwealth or republican party, as if it existed in some force at the time of the revolution, and throughout the reign of William III.; nay some writers, such as Hume, Dalrymple, and Somerville, have, by putting them in a sort of balance against the Jacobites, as the extreme of the whig and tory factions, endeavoured to persuade us that the one was as substantial and united a body as the other. It may, however, be confidently asserted, that no republican party had any existence, if by that word we are to understand a set of men whose object was the abolition of our limited monarchy. There might unquestionably be persons, especially among the independent sect, who cherished the memory of what they called the good old cause, and thought civil liberty irreconcilable with any form of regal government. But these were too inconsiderable and too far removed from political influence to deserve the appellation of a party. I believe it would be difficult to name five individuals to whom even a speculative preference of a commonwealth may with

probability be ascribed. Were it otherwise, the numerous pamphlets of this period would bear witness to their activity. Yet, with the exception, perhaps, of one or two, and those rather equivocal, we should search, I suspect, the collections of that time in vain for any manifestations of a republican spirit. If indeed an ardent zeal to see the prerogative effectually restrained, to vindicate that high authority of the house of commons over the executive administration which it has in fact claimed and exercised, to purify the house itself from corrupt influence, if a tendency to dwell upon the popular origin of civil society, and the principles which Locke, above other writers, had brought again into fashion, be called republican, as in a primary but less usual sense of the word they may, no one can deny that this spirit eminently characterised the age of William III. And schemes of reformation emanating from this source were sometimes offered to the world, trenching more perhaps on the established constitution than either necessity demanded or prudence warranted. But these were anonymous and of little influence, nor did they ever extend to the absolute subversion of the throne.[1]

William, however, was very early led to imagine, whether through the insinuations of lord Nottingham, as Burnet pretends, or the natural prejudice of kings against those who do not comply with them, that there not only existed a republican party, but that it numbered many supporters among the principal whigs. He dissolved the convention-parliament; and gave his confidence for some time to the opposite faction.[2] But, among these, a real disaffection to his government prevailed so widely, that he could with difficulty select men sincerely attached to it. The majority professed only to pay allegiance as to a sovereign de facto, and violently opposed the bill of recognition in 1690, both on account of the words rightful and lawful king which it applied to William, and of its declaring the laws passed in the last parliament to have been good and valid.[3] They had influence enough with the king to defeat a bill proposed by the whigs, by which an oath

[1] See the Somers Tracts, but still more the collection of State Tracts in the time of William III., in three volumes, folio. These are almost entirely on the whig side; and many of them, as I have intimated in the text, lean so far towards republicanism as to assert the original sovereignty of the people in very strong terms, and to propose various changes in the constitution, such as a greater equality in the representation. But I have not observed any one which recommends, even covertly, the abolition of hereditary monarchy.

[2] The sudden dissolution of this parliament cost him the hearts of those who had made him king. Besides several temporary writings, especially the Impartial Inquiry of the earl of Warrington, an honest and intrepid whig (Ralph, ii. 188.), we have a letter from Mr. Wharton, (afterwards marquis of Wharton) to the king, in Dalrymple, App. p. 80., on the change in his councils at this time, written in a strain of bold and bitter expostulation, especially on the score of his employing those who had been the servants of the late family, alluding probably to Godolphin, who was indeed open to much exception. "I wish," says lord Shrewsbury, in the same year, "you could have established your party upon the moderate and honest principled men of both factions; but, as there be a necessity of declaring, I shall make no difficulty to own my sense that your majesty and the government are much more safe depending upon the whigs, whose designs, if any against, are improbable and remoter, than with the tories, who many of them, questionless, would bring in king James; and the very best of them, I doubt, have a regency still in their heads; for, though I agree them to be the properest instruments to carry the prerogative high, yet I fear they have so unreasonable a veneration for monarchy, as not altogether to approve the foundation yours is built upon." Shrewsbury Correspond. 15.

[3] Parl. Hist. 575. Ralph, 194. Burnet, 41. Two remarkable protests were entered on the journals of the lords on occasion of this bill: one by the whigs, who were outnumbered on a particular division, and another by the tories on the passing of the bill. They are both vehe-

of abjuration of James's right was to be taken by all persons in trust.[1] It is by no means certain that even those who abstained from all connexion with James after his loss of the throne would have made a strenuous resistance in case of his landing to recover it.[2] But we know that a large proportion of the tories were engaged in a confederacy to support him. Almost every peer, in fact, of any consideration among that party, with the exception of lord Nottingham, is implicated by the secret documents which Macpherson and Dalrymple have brought to light; especially Godolphin, Carmarthen, and Marlborough, the second at that time first minister of William, as he might justly be called, the last with circumstances of extraordinary and abandoned treachery towards his country, as well as his allegiance.[3] Two of the most distinguished whigs (and if the imputation

mently expressed, and are among the not very numerous instances wherein the original whig and tory principles have been opposed to each other. The tory protest was expunged by order of the house. It is signed by eleven peers and six bishops, among whom were Stillingfleet and Lloyd. The whig protest has but ten signatures. The convention had already passed an act for preventing doubts concerning their own authority, 1 W. & M. stat. 1. c. 1., which could of course have no more validity than they were able to give it. This bill had been much opposed by the tories. Parl. Hist. v. 122.

In order to make this clearer, it should be observed that the convention which restored Charles II. not having been summoned by his writ, was not reckoned by some royalist lawyers capable of passing valid acts; and consequently all the statutes enacted by it were confirmed by the authority of the next. Clarendon lays it down as undeniable that such confirmation was necessary. Nevertheless, this objection having been made in the court of king's bench to one of their acts, the judges would not admit it to be disputed: and said, that the act being made by king, lords, and commons, they ought not now to pry into any defects of the circumstances of calling them together, neither would they suffer a point to be stirred, wherein the estates of so many were concerned. Heath v. Pryn, 1 Ventris, 15.

[1] Great indulgence was shown to the assertors of indefeasible right. The lords resolved that there should be no penalty in the bill to disable any person from sitting and voting in either house of parliament. Journs., May 5. 1690. The bill was rejected in the commons by 192 to 178. Journs., April 26. Parl. Hist. 594. Burnet, 41. ibid.

[2] Some English subjects took James's commission, and fitted out privateers, which attacked our ships. They were taken, and it was resolved to try them as pirates; when Dr. Oldys, the king's advocate, had the assurance to object that this could not be done, as if James had still the prerogatives of a sovereign prince by the law of nations. He was of course turned out, and the men hanged; but this is one instance among many of the difficulty under which the government laboured through the cursed distinction of *facto* and *jure*. Ralph, 423. The boards of customs and excise were filled by Godolphin with Jacobites. Shrewsb. Corresp. 51.

[3] The name of Carmarthen is perpetually mentioned among those whom the late king reckoned his friends. Macpherson's Papers, i. 457, &c. Yet this conduct was so evidently against his interest that we may perhaps believe him insincere. William was certainly well aware that an extensive conspiracy had been formed against his throne. It was of great importance to learn the persons involved in it and their schemes. May we not presume that lord Carmarthen's return to his ancient allegiance was feigned, in order to get an insight into the secrets of that party? This has already been conjectured by Somerville (p. 395.) of lord Sunderland, who is also implicated by Macpherson's publication, and doubtless with higher probability; for Sunderland, always a favourite of William, could not without insanity have plotted the restoration of a prince he was supposed to have betrayed. It is evident that William was perfectly master of the cabals of St. Germain's. That little court knew it was betrayed; and the suspicion fell on lord Godolphin. Dalrymple, 189. But I think Sunderland and Carmarthen more likely.

I should be inclined to suspect that by some of this double treachery the secret of princess Anne's repentant letter to her father reached William's ears. She had come readily, or at least without opposition, into that part of the settlement which postponed her succession after the death of Mary, for the remainder of the king's life. It would indeed have been absurd to expect that William was to descend from his throne in her favour; and her opposition could not have been of much avail. But when the civil list and revenue came to be settled, the tories made a violent effort to secure an income of 70,000*l.* a year to her and her husband. Parl. Hist. 492. As this on one hand seemed beyond all fair proportion to the income of the crown, so the whigs were hardly less unreasonable in contending that she should depend altogether on the king's generosity; especially as by letters patent in the late reign, which they affected to call in question, she had a revenue of about 30,000*l.* In the end she house resolved to address the king, that he would make the princess's income 50,000*l.* in the whole. This, how-

is not fully substantiated against others[1] by name, we know generally that many were liable to it) forfeited a high name among their con-

ever, left an irreconcilable enmity, which the artifices of Marlborough and his wife were employed to aggravate. They were accustomed, in the younger sister's little court, to speak of the queen with severity, and of the king with rude and odious epithets. Marlborough however went much farther. He brought that narrow and foolish woman into his own dark intrigues with St. Germain's. She wrote to her father, whom she had grossly, and almost openly charged with imposing a spurious child as prince of Wales, supplicating his forgiveness, and professing repentance for the part she had taken. Life of James, 476. Macpherson's Papers, i. 241.

If this letter, as cannot seem improbable, became known to William, we shall have a more satisfactory explanation of the queen's invincible resentment toward her sister than can be found in any other part of their history. Mary refused to see the princess on her death-bed: which shows more bitterness than suited her mild and religious temper, if we look only to their public squabbles about the Churchills as its motive. Burnet, 90. Conduct of Duchess of Marlborough, 41. But the queen must have deeply felt the unhappy, though necessary, state of enmity in which she was placed towards her father. She had borne a part in a great and glorious enterprise, obedient to a woman's highest duty; and had admirably performed those of the station to which she was called; but still with some violation of natural sentiments, and some liability to the reproach of those who do not fairly estimate the circumstances of her situation:—

Infelix! utcunque ferant ea facta minores.

Her sister, who had voluntarily trod the same path, who had misled her into a belief of her brother's illegitimacy, had now, from no real sense of duty, but out of pique and weak compliance with cunning favourites, solicited in a clandestine manner the late king's pardon, while his malediction resounded in the ears of the queen. This feebleness and duplicity made a sisterly friendship impossible.

As for lord Marlborough, he was among the first, if we except some Scots renegades, who abandoned the cause of the revolution. He had so signally broken the ties of personal gratitude in his desertion of the king on that occasion, that, according to the severe remark of Hume, his conduct required for ever afterwards the most upright, the most disinterested and most public-spirited behaviour to render it justifiable What then must we think of it, if we find in the whole of this great man's political life nothing but ambition and rapacity in his motives, nothing but treachery and intrigue in his means! He betrayed and abandoned James because he could not rise in his favour without a sacrifice that he did not care to make; he abandoned William and betrayed England because some obstacles stood yet in the way of his ambition. I do not mean only, when I say that he betrayed England, that he was ready to lay her independence and liberty at the feet of James II. and Louis XIV.; but that in one memorable instance he communicated to the court of St. Germain's, and through that to the court of Versailles, the secret of an expedition against Brest, which failed in consequence, with the loss of the commander and eight hundred men. Dalrymple, iii. 13. Life of James, 522. Macpherson, i. 487. In short, his whole life was such a picture of meanness and treachery that one must rate military services very high indeed to preserve any esteem for his memory.

The private memoirs of James II., as well as the papers published by Macpherson, show us how little treason, and especially a double treason, is thanked or trusted by those whom it pretends to serve. We see that neither Churchill nor Russell obtained any confidence from the banished king. Their motives were always suspected; and something more solid than professions of loyalty was demanded, though at the expense of their own credit. James could not forgive Russell for saying that if the French fleet came out he must fight. Macpherson, i. 242. If providence in its wrath had visited this island once more with a Stuart restoration, we may be sure that these perfidious apostates would have been no gainers by the change.

[1] During William's absence in Ireland in 1690, some of the whigs conducted themselves in a manner to raise suspicions of their fidelity; as appears by those most interesting letters of Mary, published by Dalrymple, which display her entire and devoted affection to a husband of cold and sometimes harsh manners, but capable of deep and powerful attachment, of which she was the chief object. I have heard that a late proprietor of these royal letters was offended but not judiciously, with their publication; and that the black box of king William that contained them has disappeared from Kensington. The names of the duke of Bolton, his son the marquis of Winchester, the earl of Monmouth, lord Montague, and Major Wildman, occur as objects of the queen's or her minister's suspicion. Dalrymple, App. 107, &c. But Carmarthen was desirous to throw odium on the whigs; and none of these, except on one occasion lord Winchester, appear to be mentioned in the Stuart Papers. Even Monmouth, whose want both of principle and sound sense might cause reasonable distrust, and who lay at different times of his life under this suspicion of a Jacobite intrigue, is never mentioned in Macpherson, or any other book of authority, within my recollection. Yet it is evident generally that there was a disaffected party among the whigs, or, as in the Stuart Papers they were called, republicans, who entertained the baseless project of restoring James upon terms. These were chiefly what were called compounders, to distinguish them from the thorough-paced royalists, or old tories. One person whom we should least suspect is occasionally spoken of as inclined to a king whom

temporaries, in the eyes of a posterity which has known them better; the earl or duke of Shrewsbury, from that strange feebleness of soul which hung like a spell upon his nobler qualities, and admiral Russell, from insolent pride and sullenness of temper. Both these were engaged in the vile intrigues of a faction they abhorred; but Shrewsbury soon learned again to revere the sovereign he had contributed to raise, and withdraw from the contamination of Jacobitism. It does not appear that he betrayed that trust which William is said with extraordinary magnanimity to have reposed on him, after a full knowledge of his connexion with the court of St. Germain's.[1] But Russell, though compelled to win the battle of La Hogue against his will, took care to render his splendid victory as little advantageous as possible. The credulity and almost wilful blindness of faction is strongly manifested in the conduct of the house of commons as to the quarrel between this commander and the board of admiralty. They chose to support one who was secretly a traitor, because he bore the name of whig, tolerating his infamous neglect of duty and contemptible excuses; in order to pull down an honest, though not very able minister, who belonged to the tories.[2] But they saw clearly that the king was betrayed, though mistaken, in this instance, as to the persons; and were right in concluding that the men who had effected the revolution were in general most likely to maintain it; or, in the words of a committee of the whole house, "That his majesty be humbly advised, for the necessary support of his government, to employ in his councils and management of his affairs such persons only whose principles oblige them to stand by him and his right against the late king James, and all other pretenders whatsoever." (Jan. 11, 1692–3.) It is plain from this and other votes of the commons, that the tories had lost that majority which they seem to have held in the first session of this parliament.[3]

It is not, however, to be inferred from this extensive combination in favour of the banished king, that his party embraced the majority of the nation, or that he could have been restored with any general testimonies of satisfaction. The friends of the revolution were still by far the more powerful body. Even the secret emissaries of James confess that the common people were strongly prejudiced against his return.

he had been ever conspicuous in opposing—the earl of Devonshire; but the Stuart agents often wrote according to their wishes rather than their knowledge; and it seems hard to believe what is not rendered probable by any part of his public conduct, and agrees so little with the general consistency of his family.

[1] This fact apparently rests on good authority: it is repeatedly mentioned in the Stuart Papers, and in the Life of James. Yet Shrewsbury's letter to William, after Fenwick's accusation of him, seems hardly consistent with the king's knowledge of the truth of that charge in its full extent. I think that he served his master faithfully as secretary, at least after some time, though his warm recommendation of Marlborough "who has been with me since this news [the failure of the attack on Brest] to offer his services with all the expressions of duty and fidelity imaginable," (Shrewsbury Correspondence, 47.) is somewhat suspicious, aware as he was of that traitor's connexions.

[2] Com. Journs., Nov. 28. et post. Dalrymple, iii. 11. Ralph, 346.

[3] Burnet says, "The elections of parliament (1690) went generally for men who would probably have declared for king James, if they could have known how to manage matters for him." P. 41. This is quite an exaggeration: though the tories, some of whom were at this time in place, did certainly succeed in several divisions. But parties had now begun to be split: the Jacobite tories voting with the malecontent whigs. Upon the whole, this house of commons, like the next which followed it, was well affected to the revolution settlement and to public liberty. Whig and tory were becoming little more than nicknames.

His own enumeration of peers attached to his cause cannot be brought to more than thirty, exclusive of catholics ;[1] and the real Jacobites were, I believe, in a far less proportion among the commons. The hopes of that wretched victim of his own bigotry and violence rested less on the loyalty of his former subjects, or on their disaffection to his rival, than on the perfidious conspiracy of English statesmen and admirals, of lord-lieutenants and governors of towns, and on so numerous a French army, as an ill-defended and disunited kingdom would be incapable to resist. He was to return, not as his brother, alone and unarmed, strong only in the consentient voice of the nation, but amidst the bayonets of 30,000 French auxiliaries. These were the pledges of just and constitutional rule, whom our patriot Jacobites invoked against the despotism of William III. It was from a king of the house of Stuart, from James II., from one thus encircled by the soldiers of Louis XIV., that we were to receive the guarantee of civil and religious liberty. Happily the determined love of arbitrary power, burning unextinguished amidst exile and disgrace, would not permit him to promise, in any distinct manner, those securities which a large portion of his adherents required. The Jacobite faction was divided between compounders and non-compounders ; the one insisting on the necessity of holding forth a promise of such new enactments upon the king's restoration, as might remove all jealousies as to the rights of the church and people ; the other, more agreeably to James's temper, rejecting every compromise with what they called the republican party at the expense of his ancient prerogative.[2] In a declaration which he issued from St. Germain's in 1692 there was so little acknowledgment of error, so few promises of security, so many exceptions from the amnesty he offered, that the wiser of his partisans in England were willing to insinuate that it was not authentic. (Ralph, 350. Somers Tracts, x. 211.) This declaration, and the virulence of Jacobite pamphlets in the same tone, must have done harm to his cause.[3] He published another declaration next year at the earnest request of those who had seceded to his side from that of the revolution, in which he held forth more specific assurances of consenting to a limitation of his prerogative.[4] But no reflecting man could avoid perceiving that such promises wrung from his distress were illusory and insincere, that in the exultation of triumphant loyalty, even without the sword of the

[1] Macpherson's State Papers, i. 459. These were all tories, except three or four. The great end James and his adherents had in view, was to persuade Louis into an invasion of England ; their representations therefore are to be taken with much allowance, and in some cases we know them to be false; as when James assures his brother of Versailles that three parts at least in four of the English clergy had not taken the oaths to William. Id. 409.

[2] Macpherson, 433. Somers Tracts, xi. 94. This is a pamphlet of the time, exposing the St. Germain's faction, and James's unwillingness to make concessions. It is confirmed by the most authentic documents.

[3] Many of these Jacobite tracts are printed in the Somers Collection, vol. x. The more we read of them, the more cause appears for thankfulness that the nation escaped from such a furious party. They confess, in general, very little error or misgovernment in James, but abound with malignant calumnies on his successor. The name of Tullia is repeatedly given to the mild and pious Mary. The best of these libels is styled "Great Britain's just Complaint," (p. 429.) by sir James Montgomery, the false and fickle proto-apostate of whiggism. It is written with singular vigour, and even elegance ; and rather extenuates than denies the faults of the late reign.

[4] Ralph, 418. See the Life of James, 501. It contains chiefly an absolute promise of pardon, a declaration that he would protect and defend the church of England as established by

Gaul thrown into the scale of despotism, those who dreamed of conditional restoration, and of fresh guarantees of civil liberty, would find, like the presbyterians of 1660, that it became them rather to be anxious about their own pardon, and to receive it as a signal boon of the king's clemency. The knowledge thus obtained of James's incorrigible obstinacy seems gradually to have convinced the disaffected that no hope for the nation or for themselves could be drawn from his restoration.[1] His connections with the treacherous counsellors of William grew weaker; and even before the peace of Ryswick, it was evident that the aged bigot could never wield again the sceptre he had thrown away. The scheme of assassinating our illustrious sovereign, which some of James's desperate zealots had devised without his privity, as may charitably and even reasonably be supposed,[2] gave a fatal blow to the inte-

law, and secure to its members all the churches, universities, schools, and colleges, together with its immunities, rights, and privileges, a promise not to dispense with the test, and to leave the dispensing power in other matters to be explained and limited by parliament, to give the royal assent to bills for frequent parliaments, free elections, and impartial trials, and to confirm such laws made under the present usurpation as should be tendered to him by parliament. "The king," he says himself, "was sensible he should be blamed by several of his friends for submitting to such hard terms; nor was it to be wondered at, if those who knew not the true condition of his affairs were scandalised at it; but after all he had nothing else to do." P. 505. He was so little satisfied with the articles in this declaration respecting the church of England, that he consulted several French and English divines, all of whom, including Bossuet, after some difference, came to an opinion that he could not in conscience undertake to protect and defend an erroneous church. Their objection, however, seems to have been rather to the expression than the plain sense; for they agreed that he might promise to leave the protestant church in possession of its endowments and privileges. Many too of the English Jacobites, especially the non-juring bishops, were displeased with the declaration, as limiting the prerogative; though it contained nothing which they were not clamorous to obtain from William. P. 514. A decisive proof how little that party cared for civil liberty, and how little would have satisfied them at the revolution, if James had put the church out of danger! The next paragraph is remarkable enough to be extracted for the better confirmation of what I have just said, "By this the king saw that he had outshot himself more ways than one in this declaration; and therefore what expedient he would have found in case he had been restored, not to put a force either upon his conscience or honour, does not appear, because it never came to a trial; but this is certain, his church of England friends absolved him beforehand, and sent him word, that if he considered the preamble and the very terms of the declaration, he was not bound to stand by it, or to put it out verbatim as it was worded; that the changing some expressions and ambiguous terms, so long as what was principally aimed at had been kept to, could not be called a receding from his declaration, no more than a new edition of a book can be accounted a different work, though corrected and amended. And indeed the preamble showed his promise was conditional, which they not performing, the king could not be tied; for my lord Middleton had writ, that, if the king signed the declaration, those who took it engaged to restore him in three or four months after; the king did his part, but their failure must needs take off the king's future obligation."

In a Latin letter, the original of which is written in James's own hand, to Innocent XII., dated from Dublin, Nov. 26. 1689, he declares himself "Catholicam fidem reducere in tria regna statuisse." Somers Tracts, x. 552. Though this may have been drawn up by a priest, I suppose the king understood what he said. It appears also by lord Balcarras's Memoir, that lord Melfort had drawn up the declaration as to indemnity and indulgence in such a manner, that the king might break it whenever he pleased. Somers Tracts, xi. 517.

[1] The protestants were treated with neglect and jealousy, whatever might have been their loyalty, at the court of James, as they were afterwards at that of his son. The incorrigibility of the Stuart family is very remarkable. Kennet, p. 638. and 738., enumerates many instances. Sir James Montgomery, the earl of Middleton, and others, were shunned at the court of St. Germain's as guilty of this sole crime of heresy, unless we add that of wishing for legal securities.

[2] James himself explicitly denies, in the extracts from his Life, published by Macpherson, all participation in the scheme of killing William, and says that he had twice rejected proposals for bringing him off alive; though it is not true that he speaks of the design with indignation, as some have pretended. It was very natural, and very conformable to the principles of kings, and others besides kings, in former times, that he should have lent an ear to this project; and as to James's moral and religious character, it was not better than that of Clarendon, whom we know to have countenanced similar designs for the assassination of Cromwell. In fact, the received code of ethics has been improved in this respect. We may be sure, at least, that those

rests of that faction. It was instantly seen that the murmurs of male-content whigs had nothing in common with the disaffection of Jacobites. The nation resounded with an indignant cry against the atrocious conspiracy. An association abjuring the title of James, and pledging the subscribers to avenge the king's death, after the model of that in the reign of Elizabeth, was generally signed by both houses o parliament, and throughout the kingdom.[1] The adherents of the exiled family dwindled into so powerless a minority, that they could make no sort of opposition to the act of settlement, and did not recover an efficient character as a party till towards the latter end of the ensuing reign.

Perhaps the indignation of parliament, against those who sought to bring back despotism through civil war and the murder of an heroic sovereign, was carried too far in the bill for attainting sir John Fenwick of treason. Two witnesses, required by our law in a charge of that nature, Porter and Goodman, had deposed before the grand jury to Fenwick's share in the scheme of invasion, though there is no reason to believe that he was privy to the intended assassination of the king.

who ran such a risk for James's sake expected to be thanked and rewarded in the event of success. I cannot therefore agree with Dalrymple, who says that nothing but the fury of party could have exposed James to this suspicion. Though the proof seems very short of conviction, there are some facts worthy of notice. 1. Burnet positively charges the late king with privity to the conspiracy of Grandval, executed at Flanders for a design on William's life, 1692 (p. 95.); and this he does with so much particularity, and so little hesitation, that he seems to have drawn his information from high authority. The sentence of the court martial on Grandval also alludes to James's knowledge of the crime, (Somers Tracts, x. 580.) and mentions expressions of his, which, though not conclusive, would raise a strong presumption in any ordinary case. 2. William himself, in a memorial intended to have been delivered to the ministers of all the allied powers at Ryswick, in answer to that of James (Id. xi. 103. Ralph, 730.), positively imputes to the latter repeated conspiracies against his life; and he was incapable of saying what he did not believe. In the same memorial he shows too much magnanimity to assert that the birth of the prince of Wales was an imposture. P. iii. 3. A paper by Charnock, undeniably one of the conspirators, addressed to James, contains a marked allusion to William's possible death in a short time; which even Macpherson calls a delicate mode of hinting the assassination plot to him. Macpherson, State Papers, i. 519. Compare also State Trials, xii. 1323. 1327. 1329. 4. Somerville, though a disbeliever in James's participation, has a very curious quotation from Lamberti, tending to implicate Louis XIV., p. 428.; and we can hardly suppose that he kept the other out of the secret. Indeed, the crime is greater and less credible in Louis than in James. But devout kings have odd notions of morality; and their confessors, I suppose, much the same. I admit, as before, that the evidence falls short of conviction; and that the verdict, in the language of Scots law, should be, Not Proven; but it is too much for our Stuart apologists to treat the question as one absolutely determined. Documents may yet appear that will change its aspect.

I leave the above paragraph as it was written before the publication of M. Mazure's valuable History of the Revolution. He has therein brought to light a commission of James to Crosby, in 1693, authorising and requiring him "to seize and secure the person of the prince of Orange, and to bring him before us, taking to your assistance such other of our faithful subjects in whom you may place confidence." Hist. de la Révol. iii. 443. It is justly observed by M. Mazure, that Crosby might think no renewal of his authority necessary in 1696 to do that which he had been required to do in 1693. If we look attentively at James's own language, in Macpherson's extracts, without much regarding the glosses of Innes, it will appear that he does not deny in express terms that he had consented to the attempt in 1696 to seize the prince of Orange's person. In the commission to Crosby he is required not only to do this, but to bring him before the king. But is it possible to consider this language as anything else than an euphemism for assassination?

Upon the whole evidence, therefore, I now think that James was privy to the conspiracy, of which the natural and inevitable consequence must have been foreseen by himself; but I leave the text as it stood, in order to show that I have not been guided by any prejudice against his character.

[1] Parl. Hist. 991. Fifteen peers and ninety-two commoners refused. The names of the latter were circulated in a printed paper, which the house voted to be a breach of their privilege, and destruction of the freedom and liberties of parliament. Oct. 30. 1696. This, however, shows the unpopularity of their opposition.

His wife subsequently prevailed on Goodman to quit the kingdom; and thus it became impossible to obtain a conviction in the course of law. This was the apology for a special act of the legislature, by which he suffered the penalties of treason. It did not, like some other acts of attainder, inflict a punishment beyond the offence, but supplied the deficiency of legal evidence. It was sustained by the production of Goodman's examination before the privy-council, and by the evidence of two grand-jurymen as to the deposition he had made on oath before them, and on which they had found the bill of indictment. It was also shown that he had been tampered with by lady Mary Fenwick to leave the kingdom. This was undoubtedly as good secondary evidence as can well be imagined; and, though in criminal cases such evidence is not admissible by courts of law, it was plausibly urged that the legislature might prevent Fenwick from taking advantage of his own underhand management, without transgressing the moral rules of justice, or even setting the dangerous precedent of punishing treason upon a single testimony. Yet, upon the whole, the importance of adhering to the stubborn rules of law in matters of treason is so weighty, and the difficulty of keeping such a body as the house of commons within any less precise limits so manifest, that we may well concur with those who thought sir John Fenwick much too inconsiderable a person to warrant such an anomaly. The jealous sense of liberty prevalent in William's reign produced a very strong opposition to this bill of attainder; it passed in each house, especially in the lords, by a small majority.[1] Nor, perhaps, would it have been carried but for Fenwick's imprudent disclosure, in order to save his life, of some great statesman's intrigues with the late king; a disclosure which he dared not, or was not in a situation to confirm, but which rendered him the victim of their fear and revenge. Russell, one of those accused, brought into the commons the bill of attainder; Marlborough voted in favour of it, the only instance wherein he quitted the tories; Godolphin and Bath, with more humanity, took the other side; and Shrewsbury, who could not easily vote against the court, absented himself from the house of lords.[2] It is now well known that Fenwick's discoveries went not a

[1] Burnet; see the notes on the Oxford edition. Ralph, 692. The motion for bringing in the bill, Nov. 6. 1696, was carried by 169 to 61; but this majority lessened at every stage; and the final division was only 189 to 156. In the lords it passed by 68 to 61; several whigs, and even the duke of Devonshire, then lord steward, voting in the minority. Parl. Hist. 996–1154. Marlborough probably made prince George of Denmark support the measure. Shrewsbury Correspondence, 449. Many remarkable letters on the subject are to be found in this collection; but I warn the reader against trusting any part of the volume except the letters themselves. The editor has, in defiance of notorious facts, represented sir John Fenwick's disclosures as false; and twice charges him with prevarication (p. 404.), using the word without any knowledge of its sense, in declining to answer questions put to him by members of the house of commons, which he could not have answered without inflaming the animosity that sought his life.

It is said in a note of lord Hardwicke on Burnet, that "the king, before the session, had sir John Fenwick brought to the cabinet council, where he was present himself. But sir John would not explain his paper." See Shrewsbury Correspondence, 419. et post. The truth was, that Fenwick, having had his information at second-hand, could not prove his assertions, and feared to make his case worse by repeating them.

[2] Godolphin, who was then first commissioner of the treasury, not much to the liking of the whigs, seems to have been tricked by Sunderland into retiring from office on this occasion. Id. 415. Shrewsbury, secretary of state, could hardly be restrained by the king and his own friends from resigning the seals as soon as he knew of Fenwick's accusation. His behaviour shows either a consciousness of guilt or an inconceivable cowardice. Yet at first he wrote to the king, pretending to mention candidly all that had passed between him and the earl of

step beyond the truth. Their effect, however, was beneficial to the state; as by displaying a strange want of secrecy in the court of St. Germain's, Fenwick never having had any direct communication with those he accused, it caused Godolphin and Marlborough to break off their dangerous course of perfidy. (Life of James, ii. 558.)

Amidst these scenes of dissension and disaffection, and amidst the public losses and decline which aggravated them, we have scarce any object to contemplate with pleasure, but the magnanimous and unconquerable soul of William. Mistaken in some parts of his domestic policy, unsuited by some failings of his character for the English nation, it is still to his superiority in virtue and energy over all her own natives in that age that England is indebted for the preservation of her honour and liberty; not at the crisis only of the revolution, but through the difficult period that elapsed until the peace of Ryswick. A war of nine years, generally unfortunate, unsatisfactory in its result, carried on at a cost unknown to former times, amidst the decay of trade, the exhaustion of resources, the decline, as there seems good reason to believe, of population itself, was the festering wound that turned a people's gratitude into factiousness and treachery. It was easy to excite the national prejudices against campaigns in Flanders, especially when so unsuccessful, and to inveigh against the neglect of our maritime power. Yet, unless we could have been secure against invasion, which Louis would infallibly have attempted, had not his whole force been occupied by the grand alliance, and which, in the feeble condition of our navy and commerce, at one time could not have been impracticable, the defeats of Steenkirk and Landen might probably have been sustained at home. The war of 1689, and the great confederacy of Europe, which William alone could animate with any steadiness and energy, were most evidently and undeniably the means of preserving the independence of England. That danger, which has sometimes been in our countrymen's mouths with little meaning, of becoming a province to France, was then close and actual; for I hold the restoration of the house of Stuart to be but another expression for that ignominy and servitude.

The expense therefore of this war must not be reckoned unnecessary; nor must we censure the government for that small portion of our debt which it was compelled to entail on posterity.[1] It is to the honour of William's administration, and of his parliaments, not always clear-

Middleton, which in fact amounted to nothing. P. 147. This letter, however, seems to show that a story which has been several times told, and is confirmed by the biographer of James II. and by Macpherson's Papers, that William compelled Shrewsbury to accept office in 1693, by letting him know that he was aware of his connexion with St. Germain's, is not founded in truth. He could hardly have written in such a style to the king with that fact in his way. Monmouth, however, had some suspicion of it; as appears by the hints he furnished to sir J. Fenwick, towards establishing the charges. P. 450. Lord Dartmouth, full of inveterate prejudices against the king, charges him with personal pique against sir John Fenwick, and with instigating members to vote for the bill. Yet it rather seems that he was, at least for some time, by no means anxious for it. Shrewsbury Correspondence: and compare Coxe's Life of Marlborough, i. 63.

[1] The debt at the king's death amounted to 16,394,702*l.*, of which above three millions were to expire in 1710. Sinclair's Hist. of Revenue, i. 425. (third edition.)

Of this sum 664,263*l.* was incurred before the revolution, being a part of the money of which Charles II. had robbed the public creditor by shutting up the exchequer. Interest was paid upon this down to 1683, when the king stopped it. The legislature ought undoubtedly to have done justice more effectually and speedily than by passing an act 1699, which was not to

sighted, but honest and zealous for the public weal, that they deviated so little from the praiseworthy, though sometimes impracticable, policy of providing a revenue commensurate with the annual expenditure. The supplies annually raised during the war were about five millions, more than double the revenue of James II. But a great decline took place in the produce of the taxes by which that revenue was levied. In 1693, the customs had dwindled to less than half their amount before the revolution, the excise duties to little more than half.[1] This rendered heavy impositions on land inevitable; a tax always obnoxious, and keeping up disaffection in the most powerful class of the community. The first land-tax was imposed in 1690, at the rate of three shillings in the pound on the rental; and it continued ever afterwards to be annually granted, at different rates, but commonly at four shillings in the pound, till it was made perpetual in 1798. A tax of twenty per cent might well seem grievous; and the notorious inequality of the assessment in different counties tended rather to aggravate the burthen upon those whose contribution was the fairest. Fresh schemes of finance were devised, and, on the whole, patiently borne by a jaded people. The Bank of England rose under the auspices of the whig party, and materially relieved the immediate exigencies of the government, while it palliated the general distress, by discounting bills and lending money at an easier rate of interest. Yet its notes were depreciated by twenty per cent. in exchange for silver; and exchequer tallies at least twice as much, till they were funded at an interest of eight per cent.[2] But, these resources generally falling very short of calculation, and being anticipated at such an exorbitant discount, a constantly increasing deficiency arose; and public credit sunk so low, that about the year 1696 it was hardly possible to pay the fleet and army from month to month, and a total bankruptcy seemed near at hand. These distresses again were enhanced by the depreciation of the circulating coin, and by the bold remedy of a re-coinage, which made the immediate stagnation of commerce more complete. The mere operation of exchanging the worn silver coin for the new, which Mr. Montague had the courage to do without lowering the standard, cost the government two millions and a half. Certainly the vessel of our commonwealth has never been so close to shipwreck as in this period; we have seen

take effect till Dec. 25. 1705; from which time the excise was charged with three per cent. interest on the principal sum of 1,328,526*l.*, subject to be redeemed by payment of a moiety. No compensation was given for the loss of so many years' interest. 12 & 13 W. 3. c. 12. § 15.

Sinclair, i. 397. State Trials, xiv. 1. et post. According to a particular statement in Somers' Tracts, xii. 383., the receipts of the exchequer, including loans, during the whole reign of William, amounted to rather more than 72,000,000*l.* The author of the Letter to the Rev. T. Carte, in answer to the latter's Letter to a Bystander, estimates the sums raised under Charles II., from Christmas, 1660, to Christmas, 1684, at 46,233,923*l.* Carte had made them only 32,474,265*l.* But his estimate is evidently false and deceptive. Both reckon the gross produce not the exchequer payments. This controversy was about the year 1742. According to Sinclair, Hist. of Revenue, i. 309., Carte had the last word; but I cannot conceive how he answered the above-mentioned letter to him. Whatever might be the relative expenditure of the two reigns, it is evident that the war of 1689 was brought on, in a great measure, by the corrupt policy of Charles II.

[1] Davenant, Essay on Ways and Means. In another of his tracts, vol. ii. 266. edit. 1771, this writer computes the payments of the state in 1688 at one shilling in the pound of the national income; but after the war at two shillings and sixpence.

[2] Godfrey's Short Account of Bank of England, in Somers Tracts, xi. 5. Kennet's complete Hist. iii. 723. Ralph, 681. Shrewsbury Papers. Macpherson's Annals of Commerce, A.D. 1697. Sinclair's Hist. of Revenue.

the storm raging in still greater terror round our heads, but with far stouter planks and tougher cables to confront and ride through it.

Those who accused William of neglecting the maritime force of England, knew little what they said, or cared little about its truth.[1] A soldier and a native of Holland, he naturally looked to the Spanish Netherlands as the theatre on which the battle of France and Europe was to be fought. It was by the possession of that country and its chief fortresses that Louis aspired to hold Holland in vassalage, to menace the coasts of England, and to keep the Empire under his influence. And if, with the assistance of those brave regiments, who learned, in the well-contested though unfortunate battles of that war, the skill and discipline which made them conquerors in the next, it was found that France was still an overmatch for the allies, what would have been effected against her by the decrepitude of Spain, the perverse pride of Austria, and the selfish disunion of Germany? The commerce of France might, perhaps, have suffered more by an exclusively maritime warfare; but we should have obtained this advantage, which in itself is none, and would not have essentially crippled her force, at the price of abandoning to her ambition the quarry it had so long in pursuit. Meanwhile the naval annals of this war added much to our renown; Russell, glorious in his own despite at La Hogue, Rooke, and Shovel kept up the honour of the English flag. After that great victory, the enemy never encountered us in battle; and the wintering of the fleet at Cadiz in 1694, a measure determined by William's energetic mind, against the advice of his ministers, and in spite of the fretful insolence of the admiral, gave us so decided a pre-eminence both in the Atlantic and Mediterranean seas, that it is hard to say what more could have been achieved by the most exclusive attention to the navy.[2] It is true that, especially during the first part of the war, vast losses were sustained through the capture of merchant ships; but this is the inevitable lot of a commercial country, and has occurred in every war, until the practice of placing the traders under convoy of armed ships was introduced. And, when we consider the treachery which pervaded this service, and the great facility of secret intelligence which the enemy possessed, we may be astonished that our failures and losses were not more complete.

[1] "Nor is it true that the sea was neglected; for I think during much the greater part of the war which began in 1689 we were entirely masters of the sea, by our victory in 1692, which was only three years after it broke out: so that for seven years we carried the *broom*. And for any neglect of our sea affairs otherwise, I believe, I may in a few words prove that all the princes since the Conquest never made so remarkable an improvement to our naval strength as king William. He (Swift) should have been told, if he did not know, what havoc the Dutch had made of our shipping in king Charles the Second's reign; and that his successor, king James the Second, had not in his whole navy fitted out to defeat the designed invasion of the prince of Orange an individual ship of the first or second rank, which all lay neglected, and mere skeletons of former services, at their moorings. These this abused prince repaired at an immense charge, and brought them to their pristine magnificence." Answer to Swift's Conduct of the Allies, in Somers Tracts, xiii. 247.

[2] Dalrymple has remarked the important consequences of this bold measure; but we have learned only by the publication of lord Shrewsbury's Correspondence, that it originated with the king, and was carried through by him against the mutinous remonstrance of Russell. See pp. 68. 104. 202. 210. 234. This was a most odious man; as ill-tempered and violent as he was perfidious. But the rudeness with which the king was treated by some of his servants is very remarkable. Lord Sunderland wrote to him at least with great bluntness. Hardwicke Papers, 444.

The treaty of Ryswick was concluded on at least as fair terms as almost perpetual ill fortune could warrant us to expect. It compelled Louis XIV. to recognise the king's title, and thus both humbled the court of St. Germains, and put an end for several years to its intrigues. It extinguished, or rather the war itself had extinguished, one of the bold hopes of the French court, the scheme of procuring the election of the dauphin to the Empire. It gave at least a breathing time to Europe, so long as the feeble lamp of Charles II.'s life should continue to glimmer, during which the fate of his vast succession might possibly be regulated without injury to the liberties of Europe.[1] But to those who looked with the king's eyes on the prospects of the Continent, this pacification could appear nothing else than a preliminary armistice of vigilance and preparation. He knew that the Spanish dominions, or at least as large a portion of them as could be grasped by a powerful arm, had been for more than thirty years the object of Louis XIV. The acquisitions of that monarch at Aix-la-Chapelle and Nimeguen had been comparatively trifling, and seem hardly enough to justify the dread that Europe felt of his aggressions. But in contenting himself for the time with a few strong towns, or a moderate district, he constantly kept in view the weakness of the king of Spain's constitution. The queen's renunciation of her right of succession was invalid in the jurisprudence of his court. Sovereigns, according to the public law of France, uncontrollable by the rights of others, were incapable of limiting their own. They might do all things but guarantee the privileges of their subjects or the independence of foreign states. By the queen of France's death, her claim upon the inheritance of Spain was devolved upon the dauphin; so that ultimately, and virtually in the first instance, the two great monarchies would be consolidated, and a single will would direct a force much more than equal to all the rest of Europe. If we admit that every little oscillation in the balance of power has sometimes been too minutely regarded by English statesmen, it would be absurd to contend, that such a subversion of it as the union of France and Spain under one head did not most seriously threaten both the independence of England and Holland.

The house of commons which sat at the conclusion of the treaty of Ryswick, chiefly composed of whigs, and having zealously co-operated in the prosecution of the late war, could not be supposed lukewarm in the cause of liberty, or indifferent to the aggrandisement of France. But the nation's exhausted state seemed to demand an intermission of its burthens, and revived the natural and laudable disposition to frugality which had characterised in all former times an English parliament. The arrears of the war, joined to loans made during it

[1] The peace of Ryswick was absolutely necessary, not only on account of the defection of the duke of Savoy, and the manifest disadvantage with which the allies carried on the war but because public credit in England was almost annihilated, and it was hardly possible to pay the army. The extreme distress for money is forcibly displayed in some of the king's letters to lord Shrewsbury. P. 114, &c. These were in 1696, the very *nadir* of English prosperity; from which, by the favour of Providence and the buoyant energies of the nation, we have, though not quite with an uniform motion, culminated to our present height (1824).

If the treaty could have been concluded on the basis originally laid down, it would even have been honourable. But the French rose in their terms during the negotiation; and through the selfishness of Austria obtained Strasburgh, which they had at first offered to relinquish, and were very near getting Luxemburg. Shrewsbury Correspondence, 316, &c. Still the terms were better than those offered in 1693, which William has been censured for refusing.

progress, left a debt of about seventeen millions, which excited much inquietude, and evidently could not be discharged but by steady retrenchment and uninterrupted peace. But, more than this, a reluctance to see a standing army established prevailed among the great majority both of whigs and tories. It was unknown to their ancestors—this was enough for one party; it was dangerous to liberty—this alarmed the other. Men of ability and honest intention, but, like most speculative politicians of the sixteenth and seventeenth centuries, rather too fond of seeking analogies in ancient history, influenced the public opinion by their writings, and carried too far the undeniable truth, that a large army at the mere control of an ambitious prince may often overthrow the liberties of a people.[1] It was not sufficiently remembered, that the bill of rights, the annual mutiny bill, the necessity of annual votes of supply for the maintenance of a regular army, besides, what was far more than all, the publicity of all acts of government, and the strong spirit of liberty burning in the people, had materially diminished a danger which it would not be safe entirely to contemn.

Such, however, was the influence of what may be called the constitutional antipathy of the English in that age to a regular army, that the commons, in the first session after the peace, voted that all troops raised since 1680 should be disbanded, reducing the forces to about 7000 men, which they were with difficulty prevailed upon to augment to 10,000. (Journ. 11. Dec. 1697. Parl. Hist. 1167.) They resolved, at the same time that, "in a just sense and acknowledgment of what great things his majesty has done for these kingdoms, a sum not exceeding 700,000*l.* be granted to his majesty during his life, for the support of the civil list." So ample a gift from an impoverished nation is the strongest testimony of their affection to the king.[2] But he was justly disappointed by the former vote, which, in the hazardous condition of Europe, prevented this country from wearing a countenance of preparation, more likely to avert than to bring on a second conflict. He permitted himself, however, to carry this resentment too far, and lost sight of that subordination to the law which is the duty of an English sovereign, when he evaded compliance with this resolution of the commons, and took on himself the unconstitutional responsibility of leaving sealed orders, when he went to Holland, that 16,000 men should be kept up, without the knowledge of his ministers, which they as unconstitutionally obeyed. In the next session a new parliament having been elected, full of men strongly imbued with what the courtiers styled commonwealth principles, or an extreme jealousy of royal power,[3]

[1] Moyle now published his "Argument, showing that a standing army is inconsistent with a free government, and absolutely destructive to the constitution of the English monarchy." (State Tracts, ii. 564.); and Trenchard his History of Standing Armies in England. Id 658. Other pamphlets of a similar description may be found in the same volume.

[2] Journals, 21st Dec. 1697. Parl. Hist. v. 1168. It was carried by 225 to 86.

[3] "The elections fell generally," says Burnet, "on men who were in the interest of government; many of them indeed had some popular notions, which they had drank in under a bad government, and thought this ought to keep them under a good one; so that those who wished well to the public did apprehend great difficulties in managing them." Upon which speaker Onslow has a very proper note: "They might happen to think," he says, "a good one might become a bad one, or a bad one might succeed to a good one. They were the best men of the age, and were for maintaining the revolution government by its own principles, and not those of a government it had superseded." "The elections," we read in a letter of Mr. Montague, Aug. 1698, "have made a humour appear in the counties that is not very comfortable to us who are in business. But yet after all, the present members are such as will neither

it was found impossible to resist a diminution of the army to 7000 troops.[1] These, too, were voted to be natives of the British dominions; and the king incurred the severest mortification of his reign, in the necessity of sending back his regiments of Dutch guards and French refugees. The messages that passed between him and the parliament bear witness how deeply he felt, and how fruitlessly he deprecated, this act of unkindness and ingratitude, so strikingly in contrast with the deference that parliament has generally shown to the humours and prejudices of the crown in matters of far higher moment.[2] The foreign troops were too numerous, and it would have been politic to conciliate the nationality of the multitude by reducing their number; yet they had claims which a grateful and generous people should not have forgotten: they were, many of them, the chivalry of protestantism, the Huguenot gentlemen who had lost all but their swords in a cause which we deemed our own; they were the men who had terrified James from Whitehall, and brought about a deliverance, which, to speak plainly, we had neither sense nor courage to achieve for ourselves, or which at least we could never have achieved without enduring the convulsive throes of anarchy.

There is, if not more apology for the conduct of the commons, yet more to censure on the king's side, in another scene of humiliation which he passed through, in the business of the Irish forfeitures. These confiscations of the property of those who had fought on the side of James, though, in a legal sense, at the crown's disposal, ought undoubtedly to have been applied to the public service. It was the intention of parliament that two thirds at least of these estates should be sold for that purpose; and William had, in answer to an address (Jan. 1690), promised to make no grant of them till the matter should be considered in the ensuing session. Several bills were brought in to carry the original resolutions into effect, but, probably through the influence of government, they always fell to the ground in one or other house of parliament. Meanwhile the king granted away the whole of these forfeitures, about a million of acres, with a culpable profuseness, to the enriching of his personal favourites, such as the earl of Portland and the countess of Orkney.[3] Yet as this had been done in the exercise of a lawful prerogative, it is not easy to justify the act of resumption passed in 1699. The precedents for resumption of grants were obsolete,

hurt England nor this government, but I believe they must be handled very nicely." Shrewsbury Correspondence, 551. This parliament, however, fell into a great mistake about the reduction of the army; as Bolingbroke in his Letters on History very candidly admits, though connected with those who had voted for it.

[1] Journ. 17 Dec. 1698. Parl. Hist. 1191.

[2] Journals, 10. Jan.; 18. 20. and 25. March. Lords' Journ., 8. Feb. Parl. Hist. 1167. 1191. Ralph, 808. Burnet, 219. It is now beyond doubt that William had serious thoughts of quitting the government, and retiring to Holland, sick of the faction and ingratitude of this nation. Shrewsbury Correspondence, 571. Hardwicke Papers, 362. This was in his character, and not like the vulgar story which that retailer of all gossip, Dalrymple, calls a well-authenticated tradition, that the king walked furiously round his room, exclaiming, "If I had a son, by G— the guards should not leave me." It would be vain to ask how this son would have enabled him to keep them against the bent of the parliament and people.

[3] The prodigality of William in grants to his favourites was an undeniable reproach to his reign. Charles II. had, however, with much greater profuseness, though much less blamed for it, given away almost all the crown lands in a few years after the restoration; and the commons could not now be prevailed upon to shake those grants, which was urged by the court, in order to defeat the resumption of those in the present reign. The length of time undoubtedly made a considerable difference. An enormous grant of the crown's domanial rights in

and from bad times. It was agreed on all hands that the royal domain is not inalienable; if this were a mischief, as could not perhaps be doubted, it was one that the legislature had permitted with open eyes till there was nothing left to be alienated. Acts therefore of this kind shake the general stability of possession, and destroy that confidence in which the practical sense of freedom consists, that the absolute power of the legislature, which in strictness is as arbitrary in England as in Persia, will be exercised in consistency with justice and lenity. They are also accompanied for the most part, as appears to have been the case in this instance of the Irish forfeitures, with partiality and misrepresentation as well as violence, and seldom fail to excite an odium far more than commensurate to the transient popularity which attends them at the outset.[1]

But, even if the resumption of William's Irish grants could be reckoned defensible, there can be no doubt that the mode adopted by the commons, of tacking, as it was called, the provisions for this purpose to a money bill, so as to render it impossible for the lords even to modify them without depriving the king of his supply, tended to subvert the constitution and annihilate the rights of a co-equal house of parliament. This most reprehensible device, though not an unnatural consequence of their pretended right to an exclusive concern in money bills, had been employed in a former instance during this reign. (In Feb. 1692.) They were again successful on this occasion; the lords receded from their amendments, and passed the bill at the king's desire, who perceived that the fury of the commons was tending to a terrible convulsion.[2] But the precedent was infinitely dangerous to their legislative power. If the commons, after some more attempts of the same nature, desisted from so unjust an encroachment, it must be attributed to that which has been the great preservative of the equilibrium in our government, the public voice of a reflecting people, averse to manifest innovation, and soon offended by the intemperance of factions.

The essential change which the fall of the old dynasty had wrought in our constitution displayed itself in such a vigorous spirit of inquiry and interference of parliament with all the course of government as, if not absolutely new, was more uncontested and more effectual than before the revolution. The commons indeed under Charles II. had not wholly lost sight of the precedents which the long parliament had established for them; but not without continual resistance from the court, in which their right of examination was by no means admitted. But the tories throughout the reign of William evinced a departure from the ancient principles of their faction in nothing more than in asserting to the fullest extent the powers and privileges of the commons; and, in the coalition they formed with the malecontent whigs, if the

North Wales to the earl of Portland excited much clamour in 1697, and produced a speech from Mr. Price, afterwards a baron of the exchequer, which was much extolled for its boldness, not rather to say, virulence and disaffection. This is printed in Parl. Hist. 978., and many other books. The king, on an address from the house of commons revoked the grant, which indeed was not justifiable. His answer on this occasion, it may here be remarked, was by its mildness and courtesy a striking contrast to the insolent rudeness with which the Stuarts, one and all, had invariably treated the house.

[1] Parl. Hist. 1171. 1202, &c. Ralph, Burnet, Shrewsbury Correspondence, See also Davenant's Essay on Grants and Resumptions, and sundry pamphlets in Somers Tracts, vol. ii., and State Tracts, temp. W. III., vol. ii.

[2] See the same authorities, especially the Shrewsbury Letters, p. 602.

men of liberty adopted the nickname of the men of prerogative, the 'atter did not less take up the maxims and feelings of the former. The bad success and suspected management of public affairs co-operated with the strong spirit of party to establish this important accession of authority to the house of commons. In June, 1689, a special committee was appointed to inquire into the miscarriages of the war in Ireland, especially as to the delay in relieving Londonderry. A similar committee was appointed in the lords. The former reported severely against col. Lundy, governor of that city; and the house addressed the king, that he might be sent over to be tried for the treasons laid to his charge. (Com. Journ., June 1., Aug. 12.) I do not think there is any earlier precedent in the Journals for so specific an inquiry into the conduct of a public officer, especially one in military command. It marks therefore very distinctly the change of spirit which I have so frequently mentioned. No courtier has ever since ventured to deny this general right of inquiry, though it is the constant practice to elude it. The right to inquire draws with it the necessary means, the examination of witnesses, records, papers, enforced by the strong arm of parliamentary privilege. In one respect alone these powers have fallen rather short; the commons do not administer an oath; and having neglected to claim this authority in the irregular times when they could make a privilege by a vote, they would now perhaps find difficulty in obtaining it by consent of the house of peers. They renewed this committee for inquiring into the miscarriages of the war in the next season. (Id. Nov. 1.) They went very fully into the dispute between the board of admiralty and admiral Russell, after the battle of La Hogue;[1] and the year after investigated the conduct of his successors, Killigrew and Delaval, in the command of the Channel fleet.[2] They went, in the winter of 1694, into a very long examination of the admirals and the orders issued by the admiralty during the preceding year; and then voted that the sending the fleet to the Mediterranean, and the continuing it there this winter, has been to the honour and interest of his majesty and his kingdoms. (Com. Journ. 27. Feb. 1694-5.) But it is hardly worth while to enumerate later instances of exercising a right which had become indisputable, and, even before it rested on the basis of precedent, could not reasonably be denied to those who might advise, remonstrate, and impeach.

It is not surprising that, after such important acquisitions of power, the natural spirit of encroachment, or the desire to distress a hostile government, should have led to endeavours, which by their success would have drawn the executive administration more directly into the hands of parliament. A proposition was made by some peers, in December, 1692, for a committee of both houses to consider of the present state of the nation, and what advice should be given to the king concerning it. This dangerous project was lost by 48 to 36, several tories and dissatisfied whigs uniting in a protest against its rejection. (Parl. Hist. 941. Burnet, 105.) The king had in his speech to parliament requested their advice in the most general terms; and this slight

[1] Parl. History 657. Dalrymple. Com. and Lords' Journals.
[2] Parl. Hist. 793. Delaval and Killigrew were Jacobites, whom William generously but imprudently put into the command of the fleet.

expression, though no more than is contained in the common writ of summons, was tortured into a pretext for so extraordinary a proposal as that of a committee of delegates, or council of state, which might soon have grasped the entire administration. It was at least a remedy so little according to precedent, or the analogy of our constitution, that some very serious cause of dissatisfaction with the conduct of affairs could be its only excuse.

Burnet has spoken with reprobation of another scheme engendered by the same spirit of inquiry and control, that of a council of trade, to be nominated by parliament, with powers for the effectual preservation of the interests of the merchants. If the members of it were intended to be immovable, or if the vacancies were to be filled by consent of parliament, this would indeed have encroached on the prerogative in a far more eminent degree than the famous India bill of 1783, because its operation would have been more extensive and more at home. And, even if they were only named in the first instance, as has been usual in parliamentary commissioners of account or inquiry, it would still be material to ask, what extent of power for the preservation of trade was to be placed in their hands. The precise nature of the scheme is not explained by Burnet. But it appears by the Journals that this council was to receive information from merchants as to the necessity of convoys, and send directions to the board of admiralty, subject to the king's control, to receive complaints and represent the same to the king, and in many other respects to exercise very important and anomalous functions. They were not however to be members of the house. But even with this restriction, it was too hazardous a departure from the general maxims of the constitution.[1]

The general unpopularity of William's administration, and more particularly the reduction of the forces, afford an ample justification for the two treaties of partition, which the tory faction, with scandalous injustice and inconsistency, turned to his reproach. No one could deny that the aggrandisement of France by both of these treaties was of serious consequence. But, according to the English interests, the first object was to secure the Spanish Netherlands from becoming provinces of that power; the next to maintain the real independence of Spain and the Indies. Italy was but the last in order; and though the possession of Naples and Sicily, with the ports of Tuscany, as stipulated in the treaty of partition, would have rendered France absolute mistress of that whole country and of the Mediterranean sea, and essentially changed the balance of Europe, it was yet more tolerable than the acquisition of the whole monarchy in the name of a Bourbon prince, which the opening of the succession without previous arrangement was likely to produce. They at least who shrunk from the thought of another war, and studiously depreciated the value of continental alliances, were the last who ought to have exclaimed against a treat which had been ratified as the sole means of giving us something lik security without the cost of fighting for it. Nothing therefore could be more unreasonable than the clamour of a tory house of commons in

[1] Burnet, 163. Com. Journs, Jan. 31. 1695-6. An abjuration of James's title in very strong terms was proposed as a qualification for members of this council; but this was lost by 195 to 188.

1701 (for the malecontent whigs were now so consolidated with the tories, as in general to bear their name) against the partition treaties; nothing more unfair than the impeachment of the four lords, Portland, Orford, Somers, and Halifax, on that account. But we mus at the same time remark, that it is more easy to vindicate the partition treaties themselves, than to reconcile the conduct of the king and some others with the principles established in our constitution. William had taken these important negotiations wholly into his own hands, not even communicating them to any of his English ministers, except lord Jersey, until his resolution was finally settled. Lord Somers, as chancellor, had put the great seal to blank powers, as a legal authority to the negotiators; which evidently could not be valid, unless on the dangerous principle that the seal is conclusive against all exception.[1] He had also sealed the ratification of the treaty, though not consulted upon it, and though he seems to have had objections to some of the terms; and in both instances he set up the king's command as a sufficient defence. The exclusion of all those whom, whether called privy or cabinet counsellors, the nation holds responsible for its safety, from this great negotiation, tended to throw back the whole executive government into the single will of the sovereign, and ought to have exasperated the house of commons far more than the actual treaties of partition, which may probably have been the safest choice in a most perilous condition of Europe. The impeachments however were in most respects so ill substantiated by proof, that they have generally been reckoned a disgraceful instance of party spirit.[2]

The whigs, such of them at least as continued to hold that name in honour, soon forgave the mistakes and failings of their great deliverer; and indeed a high regard for the memory of William III. may justly be reckoned one of the tests by which genuine whiggism has always been recognised. By the opposite party he was rancorously hated; and their malignant calumnies still sully the stream of history.[3] Let

[1] See speaker Onslow's Note on Burnet (Oxf. edit. 468.), and lord Hardwicke's hint of his father's opinion. Id. 475. But see also lord Somers's plea as to this. State Trials, xiii. 267.

[2] Parl. Hist. State Trials, xiv. 233. The letters of William, published in the Hardwicke State Papers, are both the most authentic and the most satisfactory explanation of his policy during the three momentous years that closed the seventeenth century. It is said, in a note of lord Hardwicke on Burnet (Oxford edit. iv. 417.) (from lord Somers's papers), that when some of the ministers objected to parts of the treaty, lord Portland's constant answer was, that nothing could be altered; upon which one of them said, if that was the case, he saw no reason why they should be called together. And it appears by the Shrewsbury Papers, p. 371., that the duke, though secretary of state, and in a manner prime minister, was entirely kept by the king out of the secret of the negotiations which ended in the peace of Ryswick: whether, after all, there remained some lurking distrust of his fidelity, or from whatever other cause this took place, it was very anomalous and unconstitutional. And it must be owned, that by this sort of proceeding, which could have no sufficient apology but a deep sense of the unworthiness of mankind, William brought on himself much of that dislike which appears so ungrateful and unaccountable.

As to the impeachments, few have pretended to justify them; even Ralph is half ashamed of the party he espouses with so little candour towards their adversaries. The scandalous conduct of the tories in screening the earl of Jersey, while they impeached the whig lords, some of whom had really borne no part in a measure he had promoted, sufficiently displays the factiousness of their motives. See lord Haversham's speech on this. Parl. Hist. 1298.

[3] Bishop Fleetwood, in a sermon, preached in 1703, says of William, "whom all the world of friends and enemies know how to value, except a *few English wretches.*" Kennet, 840. Boyer, in his History of the Reign of Queen Anne, p. 12., says that the king spent most of his private fortune, computed at no less than two millions, in the service of the English nation. I should be glad to have found this vouched by better authority.

us leave such as prefer Charles I. to William III. in the enjoyment of prejudices which are not likely to be overcome by argument. But it must ever be an honour to the English crown that it has been worn by so great a man. Compared with him, the statesmen who surrounded his throne, the Sunderlands, Godolphins, and Shrewsburys, even the Somerses and Montagues, sink into insignificance. He was, in truth, too great, not for the times wherein he was called to action, but for the peculiar condition of a king of England after the revolution; and as he was the last sovereign of this country whose understanding and energy of character have been very distinguished, so was he the last who has encountered the resistance of his parliament, or stood apart and undisguised in the maintenance of his own prerogative. His reign is no doubt one of the most important in our constitutional history, both on account of its general character, which I have slightly sketched, and of those beneficial alterations in our law to which it gave rise. These now call for our attention.

The enormous duration of seventeen years, for which Charles II. protracted his second parliament, turned the thoughts of all who desired improvements in the constitution towards some limitation on a prerogative which had not hitherto been thus abused. Not only the continuance of the same house of commons during such a period destroyed the connexion between the people and their representatives, and laid open the latter, without responsibility, to the corruption which was hardly denied to prevail; but the privilege of exemption from civil process made needy and worthless men secure against their creditors, and desirous of a seat in parliament as a complete safeguard to fraud and injustice. The term of three years appeared sufficient to establish a control of the electoral over the representative body, without recurring to the ancient but inconvenient scheme of annual parliaments, which men enamoured of a still more popular form of government than our own were eager to recommend. A bill for this purpose was brought into the house of lords in December, 1689, but lost by the prorogation. (Lords' Journals.) It passed both houses early in 1693, the whigs generally supporting, and the tories opposing it; but on this, as on many other great questions of this reign, the two parties were not so regularly arrayed against each other as on points of a more personal nature. (Parl. Hist. 754.) To this bill the king refused his assent: an exercise of prerogative which no ordinary circumstances can reconcile either with prudence or with a constitutional administration of government. But the commons, as it was easy to foresee, did not abandon so important a measure; a similar bill received the royal assent in November, 1694. (6 W. & M. c. 2.) By the triennial bill it was simply provided that every parliament should cease and determine within three years from its meeting. The clause contained in the act of Charles II. against the intermission of parliaments for more than three years is repeated; but it was not thought necessary to revive the somewhat violent and perhaps impracticable provisions by which the act of 1641 had secured their meeting; it being evident that even annual sessions might now be relied upon as indispensable to the machine of government.

This annual assembly of parliament was rendered necessary, in the

first place, by the strict appropriation of the revenue according to votes of supply. It was secured next, by passing the mutiny-bill, under which the army is held together, and subjected to military discipline, for a short term, seldom or never exceeding twelve months. These are the two effectual securities against military power; that no pay can be issued to the troops without a previous authorisation by the commons in a committee of supply, and by both houses in an act of appropriation; and that no officer or soldier can be punished for disobedience, nor any court martial held, without the annual re-enactment of the mutiny bill. Thus it is strictly true that, if the king were not to summon parliament every year, his army would cease to have a legal existence; and the refusal of either house to concur in the mutiny bill would at once wrest the sword out of his grasp. By the bill of rights, it is declared unlawful to keep any forces in time of peace without consent of parliament. This consent, by an invariable and wholesome usage, is given only from year to year; and its necessity may be considered perhaps the most powerful of those causes which have transferred so much even of the executive power into the management of the two houses of parliament.

The reign of William is also distinguished by the provisions introduced into our law for the security of the subject against iniquitous condemnations on the charge of high treason, and intended to perfect those of earlier times, which had proved insufficient against the partiality of judges. But upon this occasion it will be necessary to take up the history of our constitutional law on this important head from the beginning.

In the earlier ages of our law, the crime of high treason appears to have been of a vague and indefinite nature, determined only by such arbitrary construction as the circumstances of each particular case might suggest. It was held treason to kill the king's father or his uncle; and Mortimer was attainted for accroaching, as it was called, royal power; that is, for keeping the administration in his own hands, though without violence towards the reigning prince. But no people can enjoy a free constitution, unless an adequate security is furnished by their laws against this discretion of judges in a matter so closely connected with the mutual relation between the government and its subjects. A petition was accordingly presented to Edward III. by one of the best parliaments that ever sat, requesting that "whereas the king's justices in different counties adjudge men indicted before them to be traitors for divers matters not known by the commons to be treasonable, the king would, by his council, and the nobles, and learned men (les grands et sages) of the land, declare in parliament what should be held for treason." The answer to this petition is in the words of the existing statute, which, as it is by no means so prolix as it is important, I shall place before the reader's eyes.

"Whereas divers opinions have been before this time in what case treason shall be said, and in what not; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to say, when a man doth compass or imagine the death of our lord the king, of my lady his queen, or of their eldest son and heir: or if a man do violate the king's companion or the king's

eldest daughter unmarried, or the wife of the king's eldest son and heir: or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be proveably attainted of open deed by people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lusheburg, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceipt of our said lord the king and of his people; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their place doing their offices; and it is to be understood, that in the cases above rehearsed, it ought to be judged treason which extends to our lord the king and his royal majesty. And of such treason the forfeiture of the escheats pertaineth to our lord the king, as well of the lands and tenements holden of others as of himself." (Rot. Parl. ii. 239. 3 Inst. 1.)

It seems impossible not to observe that the want of distinct arrangement natural to so unphilosophical an age, and which renders many of our old statutes very confused, is eminently displayed in this strange conjunction of offences; where to counterfeit the king's seal, which might be for the sake of private fraud, and even his coin, which must be so, is ranged along with all that really endangers the established government, with conspiracy and insurrection. But this is an objection of little magnitude, compared with one that arises out of an omission in enumerating the modes whereby treason could be committed. In most other offences, the intention, however manifest, the contrivance, however deliberate, the attempt, however casually rendered abortive, form so many degrees of malignity, or at least of mischief, which the jurisprudence of most countries, and none more than England, has been accustomed to distinguish from the perpetrated action by awarding an inferior punishment, or even none at all. Nor is this distinction merely founded on a difference in the moral indignation with which we are impelled to regard an inchoate and a consummate crime, but is warranted by a principle of reason, since the penalties attached to the completed offence spread their terror over all the machinations preparatory to it; and he who fails in his stroke has had the murderer's fate as much before his eyes as the more dexterous assassin. But those who conspire against the constituted government connect in their sanguine hope the assurance of impunity with the execution of their crime, and would justly deride the mockery of an accusation which could only be preferred against them when their banners were unfurled, and their force arrayed. It is as reasonable therefore, as it is conformable to the usages of every country, to place conspiracies against the sovereign power upon the footing of actual rebellion, and to crush those by the penalties of treason, who, were the law to wait for their opportunity, might silence or pervert the law itself. Yet in this famous statute we find it only declared treasonable to compass or imagine the king's death; while no project of rebellion appears to fall within the letter of its enactments, unless it ripen into a substantive act of levying war.

I am less inclined to attribute this material omission to the laxity which I have already remarked to be usual in our older laws, than to apprehensions entertained by the barons that, if a mere design to levy war should be rendered treasonable, they might be exposed to much false testimony and arbitrary construction. But strained constructions of this very statute, if such were their aim, they did not prevent. I do not now advert to the more extravagant convictions under this statute in some violent reigns, but it gradually became an established doctrine with lawyers, that a conspiracy to levy war against the king's person, though not in itself a distinct treason, may be given in evidence as an overt act of compassing his death. Great as the authorities may be on which this depends, and reasonable as it surely is that such offences should be brought within the pale of high treason, yet I must confess, that this doctrine has ever appeared to me utterly irreconcilable with any fair interpretation of the statute. It has indeed, by some, been chiefly confined to cases where the attempt meditated is directly against the king's person, for the purpose of deposing him, or of compelling him, while under actual duress, to a change of measures; and this was construed into a compassing of his death, since any such violence must endanger his life, and because, as has been said, the prisons and graves of princes are not very distant.[1] But it seems not very reasonable to found a capital conviction on such a sententious remark; nor is it by any means true that a design against a king's life is necessarily to be inferred from the attempt to get possession of his person. So far indeed is this from being a general rule, that in a multitude of instances, especially during the minority or imbecility of a king, the purposes of conspirators would be wholly defeated by the death of the sovereign whose name they designed to employ. But there is still less pretext for applying the same construction to schemes of insurrection, when the royal person is not directly the object of attack, and where no circumstance indicates any hostile intention towards his safety. This ample extension of so penal a statute was first given, if I am not mistaken, by the judges in 1663, on occasion of a meeting by some persons at Farley Wood in Yorkshire, (Hale, 121.) in order to concert measures for a rising. But it was afterwards confirmed in Harding's case, immediately after the revolution, and has been repeatedly laid down from the bench in subsequent proceedings for treason, as well as in treatises of very great authority.[2] It has therefore

[1] 3 Inst. 12. 1 Hale's Pleas of the Crown, 120. Foster, 195. Coke lays it down positively, p. 14., that a conspiracy to levy war is not high treason, as an overt act of compassing the king's death. "For this were to confound the several classes or membra dividentia." Hale objects, that Coke himself cites the case of lords Essex and Southampton, which seems to contradict that opinion. But it may be answered, in the first place, that a conspiracy to levy war was made high treason during the life of Elizabeth; and secondly, that Coke's words as to that case are, that they "intended to go to the court where the queen was, and to have taken her into their power, and to have removed divers of her council, and *for that end did assemble a multitude of people*: this being raised to the end aforesaid, was a sufficient overt act of compassing the death of the queen." The earliest case is that of Storie, who was convicted of compassing the queen's death on evidence of exciting a foreign power to invade the kingdom. But he was very obnoxious; and the precedent is not good. Hale, 122.

It is also held that an actual levying war may be laid as an overt act of compassing the king's death, which indeed follows à fortiori from the former proposition; provided it be not a constructive rebellion, but one really directed against the royal authority. Hale, 123.

[2] Foster's Discourse on High Treason, 196. State Trials, xii. 646. 790. 818.; xiii. 62. (sir John Friend's case) et alibi. This important question having arisen on lord Russell's trial, gave

all the weight of established precedent; yet I question whether another instance can be found in our jurisprudence of giving so large a construction, not only to a penal, but to any other statute.[1] Nor does it speak in favour of this construction, that temporary laws have been enacted on various occasions to render a conspiracy to levy war treasonable; for which purpose, according to this current doctrine, the statute of Edward III. needed no supplemental provision. Such acts were passed under Elizabeth, Charles II., and George III., each of them limited to the existing reign. (12 Eliz. c. 1.; 13 Car. 2. c. 1.; 36 G. 3. c. 7.) But it is very seldom that, in an hereditary monarchy, the reigning prince ought to be secured by any peculiar provisions; and though the remarkable circumstances of Elizabeth's situation exposed her government to unusual perils, there seems an air of adulation or absurdity in the two latter instances. Finally, the act of 57 G. III. c. 6. has confirmed, if not extended, what stood on rather a precarious basis, and rendered perpetual that of 36 G. III. c. 7., which enacts, "that, if any person or persons whatsoever, during the life of the king, and until the end of the next session of parliament after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same our sovereign lord the king, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against his majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both houses, or either house of parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his majesty's dominions or countries under the obeisance of his majesty, his heirs and successors; and such compassings imaginations, inventions, devices, and intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being legally convicted thereof upon the oaths of two lawful and credible witnesses, shall be adjudged a traitor, and suffer as in cases of high treason."

This from henceforth will become our standard of constitutional law, instead of the statute of Edward III., the latterly received interpretations of which it sanctions and embodies. But it is to be noted as the doctrine of our most approved authorities, that a conspiracy for many

rise to a controversy between two eminent lawyers, sir Bartholomew Shower and sir Robert Atkins; the former maintaining, the latter denying, that a conspiracy to depose the king and to seize his guards was an overt act of compassing his death. State Trials, ix. 719. 818.

See also Phillipps's State Trials, ii. 39. 78.; a work to which I might have referred in other places, and which shows the well-known judgment and impartiality of the author.

[1] In the whole series of authorities, however, on this subject, it will be found that the probable danger to the king's safety from rebellion was the groundwork upon which this constructive treason rested; nor did either Hale or Foster, Pemberton or Holt, ever dream that any other death was intended by the statute than that of nature. It was reserved for a modern crown lawyer to resolve this language into a metaphysical personification, and to argue that the king's person being interwoven with the state, and its sole representative, any conspiracy against the constitution must of its own nature be a conspiracy against his life. State Trials, xxiv. 1183.

purposes which, if carried into effect, would incur the guilt of treason, will not of itself amount to it. The constructive interpretation of compassing the king's death appears only applicable to conspiracies, whereof the intent is to depose or to use personal compulsion towards him, or to usurp the administration of his government. (Hale, 123. Foster, 213.) But though insurrections in order to throw down all enclosures, to alter the established law or change religion, or in general for the reformation of alleged grievances of a public nature, wherein the insurgents have no special interest, are in themselves treasonable, yet the previous concert and conspiracy for such purpose could, under the statute of Edward III., only pass for a misdemeanour. Hence, while it has been positively laid down, that an attempt by intimidation and violence to force the repeal of a law is high treason,[1] though directed rather against the two houses of parliament than the king's person, the judges did not venture to declare that a mere conspiracy and consultation to raise a force for that purpose would amount to that offence.[2] But the statutes of 36 & 57 Geo. III. determine the intention to levy war, in order to put any force upon or to intimidate either house of parliament, manifested by an overt act, to be treason, and so far have undoubtedly extended the scope of the law. We may hope that so ample a legislative declaration on the law of treason will put an end to the preposterous interpretations which have found too much countenance on some not very distant occasions. The crime of compassing and imagining the king's death must be manifested by some overt act; that is, there must be something done in execution of a traitorous purpose. For, as no hatred towards the person of the sovereign, nor any longings for his death, are the imagination which the law here intends, it seems to follow that loose words or writings, in which such hostile feelings may be embodied, unconnected with any positive design, cannot amount to treason. It is now therefore generally agreed, that no words will constitute that offence, unless as evidence of some overt act of treason; and the same appears clearly to be the case with respect at least to unpublished writings.[3]

The second clause of the statute, or that which declares the levying of war against the king within the realm to be treason, has given rise, in some instances, to constructions hardly less strained than those upon compassing his death. It would indeed be a very narrow interpretation, as little required by the letter as warranted by the reason of this law, to limit the expression of levying war to rebellions, whereof the deposition of the sovereign, or subversion of his government, should be the deliberate object. Force, unlawfully directed against the supreme authority, constitutes this offence; nor could it have been admitted as an excuse for the wild attempt of the earl of Essex, on this charge of levying war, that his aim was not to injure the queen's person, but to

[1] Lord George Gordon's case, State Trials, xxi. 649.

[2] Hardy's case, Id. xxiv. 208. The language of chief-justice Eyre is sufficiently remarkable; his courage was more wanting than his will.

[3] Foster, 198. He seems to concur in Hale's opinion, that words which being spoken will not amount to an overt act to make good an indictment for compassing the king's death, yet if reduced into writing, and published, will make such an overt act, "if the matters contained in them import such a compassing." Hale's Pleas of Crown, 118. But this is indefinitely expressed, and the case of Williams, under James I., which Hale cites in corroboration of this, will hardly be approved by any constitutional lawyer.

drive his adversaries from her presence. The only questions as to this kind of treason are; first, what shall be understood by force? and, secondly, where shall it be construed to be directed against the government? And the solution of both these, upon consistent principles, must so much depend on the circumstances which vary the character of almost every case, that it seems natural to distrust the general maxims that have been delivered by lawyers. Many decisions in cases of treason before the revolution were made by men so servile and corrupt, they violate so grossly all natural right and all reasonable interpretation of law, that it has generally been accounted among the most important benefits of that event to have restored a purer administration of criminal justice. But, though the memory of those who pronounced these decisions is stigmatized, their authority, so far from being abrogated, has influenced later and better men; and it is rather an unfortunate circumstance, that precedents which, from the character of the times when they occurred, would lose at present all respect, having been tranfused into text-books, and formed perhaps the sole basis of subsequent decisions, are still in not a few points the invisible foundation of our law. No lawyer, I conceive, prosecuting for high treason in this age, would rely on the case of the duke of Norfolk under Elizabeth, or that of Williams under James I., or that of Benstead under Charles I.; but he would certainly not fail to dwell on the authorities of sir Edward Coke and sir Matthew Hale. Yet these eminent men, and especially the latter, aware that our law is mainly built on adjudged precedent, and not daring to reject that which they would not have themselves asserted, will be found to have rather timidly exercised their judgment in the construction of this statute, yielding a deference to former authority which we have transferred to their own.

These observations are particularly applicable to that class of cases so repugnant to the general understanding of mankind, and, I believe, of most lawyers, wherein trifling insurrections for the purpose of destroying brothels or meeting-houses have been held treasonable under the clause of levying war. Nor does there seem any ground for the defence which has been made for this construction, by taking a distinction, that although a rising to effect a partial end by force is only a riot, yet where a general purpose of the kind is in view it becomes rebellion; and thus, though to pull down the enclosures in a single manor be not treason against the king, yet to destroy all enclosures throughout the kingdom would be an infringement of his sovereign power. For, however solid this distinction may be, yet in the class of cases to which I allude, this general purpose was neither attempted to be made out in evidence, nor rendered probable by the circumstances; nor was the distinction ever taken upon the several trials. A few apprentices rose in London in the reign of Charles II., and destroyed some brothels.[1] A mob of watermen and others, at the time of Sacheverell's impeachment, set on fire several dissenting meeting-houses.[2] Every thing like a formal attack on the established

[1] Hale, 134. It is observable that Hale himself, a chief baron, differed from the other judges in this case.

[2] This is the well-known case of Damaree and Purchase, State Trials, xv. 520. Foster, 213. A rabble had attended Sacheverell from Westminster to his lodgings in the Temple.

government is so much excluded in these instances by the very nature of the offence and the means of the offenders, that it is impossible to withhold our reprobation from the original decision, upon which, with too much respect for unreasonable and unjust authority, the latter cases have been established. These indeed still continue to be cited as law; but it is much to be doubted whether a conviction for treason will ever again be obtained, or even sought for, under similar circumstances. One reason indeed for this, were there no weight in any other, might suffice; the punishment of tumultuous risings, attended with violence, has been rendered capital by the riot act of George I. and other statutes; so that, in the present state of the law, it is generally more advantageous for the government to treat an offence as felony than as treason.

It might for a moment be doubted, upon the statute of Edward VI., whether the two witnesses whom the act requires must not depose to the same overt acts of treason. But, as this would give an undue security to conspirators, so it is not necessarily implied by the expression; nor would it be indeed the most unwarrantable lattitude that has been given to this branch of penal law, to maintain that two witnesses to any distinct acts comprised in the same indictment would satisfy the letter of this enactment. But a more wholesome distinction appears to have been taken before the revolution, and is established by the statute of William, that, although different overt acts may be proved by two witnesses, they must relate to the same species of treason, so that one witness to an alleged act of compassing the king's death cannot be conjoined with another deposing to an act of levying war, in order to make up the required number. (7 W. 3. c. 3. § 4. Foster, 257.) As for the practice of courts of justice before the restoration, it was so much at variance with all principles, that few prisoners were allowed the benefit of this statute; (Foster, 234.) succeeding judges fortunately deviated more from their predecessors in the method of conducting trials than they have thought themselves at liberty to do in laying down the rules of law.

Nothing had brought so much disgrace on the councils of government and on the administration of justice, nothing more forcibly spoken the necessity of a great change, than the prosecutions for treason during the latter years of Charles II., and in truth during the whole course of our legal history, The statutes of Edward III. and Edward VI., almost set aside by sophistical constructions, required the corroboration of some more explicit law; and some peculiar securities were demanded for innocence against that conspiracy of the court with the prosecutor which is so much to be dreaded in all trials for political

Some among them proposed to pull down the meeting-houses; a cry was raised, and several of these were destroyed. It appeared to be their intention to pull down all within their reach. Upon this overt act of levying war the prisoners were convicted; some of the judges differing as to one of them, but merely on application of the evidence to his case. Notwithstanding this solemn decision, and the approbation with which sir Michal Foster has stamped it, some difficulty would arise in distinguishing this case, as reported, from many indictments under the riot act for mere felony; and especially from those of the Birmingham rioters in 1791, where the similarity of motives, though the mischief in the latter instance was far more extensive, would naturally have suggested the same species of prosecution as was adopted against Damaree and Purchase. It may be remarked that neither of these men was executed; which, notwithstanding the sarcastic observation of Foster, might possibly be owing to an opinion, which every one but a lawyer must have entertained, that their offence did not amount to treason.

crimes. Hence the attainders of Russell, Sidney, Cornish, and Armstrong were reversed by the convention-parliament without opposition; and men attached to liberty and justice, whether of the whig or tory name, were anxious to prevent any future recurrence of those iniquitous proceedings, by which the popular frenzy at one time, the wickedness of the court at another, and in each instance with the co-operation of a servile bench of judges, had sullied the honour of English justice. A better tone of political sentiment had begun indeed to prevail, and the spirit of the people must ever be a more effectual security than the virtue of the judges; yet, even after the revolution, if no unjust or illegal convictions in cases of treason can be imputed to our tribunals, there was still not a little of that rudeness towards the prisoner, and manifestation of a desire to interpret all things to his prejudice, which had been more grossly displayed by the bench under Charles II. The Jacobites, against whom the law now directed its terrors, as loudly complained of Treby and Pollexfen, as the whigs had of Scroggs and Jefferies, and weighed the convictions of Ashton and Anderton against those of Russell and Sidney.[1]

Ashton was a gentleman, who, in company with lord Preston, was seized in endeavouring to go over to France with an invitation from the Jacobite party. The contemporary writers on that side, and some historians who incline to it, have represented his conviction as grounded upon insufficient, because only upon presumptive, evidence. It is true that in most of our earlier cases of treason, treasonable facts have been directly proved; whereas it was left to the jury in that of Ashton, whether they were satisfied of his acquaintance with the contents of certain papers taken on his person. There does not, however, seem to be any reason why presumptive inferences are to be rejected in charges of treason, or why they should be drawn with more hesitation than in other grave offences; and if this be admitted, there can be no doubt that the evidence against Ashton was such as is ordinarily reckoned conclusive. It is stronger than that offered for the prosecution against O'Quigley at Maidstone in 1798, a case of the closest resemblance; and yet I am not aware that the verdict in that instance was thought open to censure. No judge, however, in modern times, would question, much less rely upon, the prisoner, as to material points of his defence, as Holt and Pollexfen did in this trial; the practice of a neighbouring kingdom, which, in our more advanced sense of equity and candour, we are agreed to condemn. (State Trials, xii. 646. See 668. and 799.)

It is perhaps less easy to justify the conduct of chief-justice Treby in the trial of Anderton for printing a treasonable pamphlet. The testimony came very short of satisfactory proof, according to the established rules of English law, though by no means such as men in

[1] "Would you have trials secured?" says the author of the Jacobite Principles Vindicated. (Somers Tracts, 10. 526.) "It is the interest of all parties care should be taken about them, or all parties will suffer in their turns. Plucknet, and Sidney, and Ashton were doubtless all murdered, though they were never so guilty of the crimes wherewith they were charged; the one tried twice, the other found guilty upon one evidence, and the last upon nothing but presumptive proof." Even the prostitute lawyer, sir Bartholomew Shower, had the assurance to complain of uncertainty in the law of treason. Id. 572. And Roger North, in his Examen, p. 411., labours hard to show that the evidence in Ashton's case was slighter than in Sidney's.

general would slight. It chiefly consisted of a comparison between the characters of a printed work found concealed in his lodgings and certain types belonging to his press; a comparison manifestly less admissible than that of hand-writing, which is always rejected, and indeed totally inconsistent with the rigour of English proof. Besides the common objections made to a comparison of hands, and which apply more forcibly to printed characters, it is manifest that types cast in the same font must always be exactly similar. But, on the other hand, it seems unreasonable absolutely to exclude, as our courts have done, the comparison of hand-writing as inadmissible evidence; a rule which is every day eluded by fresh rules, not much more rational in themselves, which have been invented to get rid of its inconvenience. There seems, however, much danger in the construction which draws printed libels, unconnected with any conspiracy, within the pale of treason, and especially the treason of compassing the king's death, unless where they directly tend to his assassination. No later authority can, as far as I remember, be adduced for the prosecution of any libel as treasonable, under the statute of Edward III. But the pamphlet for which Anderton was convicted was certainly full of the most audacious Jacobitism, and might perhaps fall, by no unfair construction, within the charge of adhering to the king's enemies; since no one could be more so than James, whose design of invading the realm had been frequently avowed by himself.[1]

A bill for regulating trials upon charges of high treason passed the commons with slight resistance from the crown lawyers in 1691. (Parl. Hist. v. 698.) The lords introduced a provision in their own favour, that upon the trial of a peer in the court of the high steward, all such as were entitled to vote should be regularly summoned; it having been the practice to select twenty-three at the discretion of the crown. Those who wished to hinder the bill availed themselves of the jealousy which the commons in that age entertained of the upper house of parliament, and persuaded them to disagree with this just and reasonable amendment. (Id. 675.) It fell to the ground therefore on this occasion; and though more than once revived in subsequent sessions, the same difference between the two houses continued to be insuperable. (Id. 721. 737. Com. Journ., Feb. 8. 1695.) In the new parliament that met in 1695, the commons had the good sense to recede from an irrational jealousy. Notwithstanding the reluctance of the ministry, for which perhaps the very dangerous position of the king's government furnishes an apology, this excellent statute was enacted as an additional guarantee (in such bad times as might occur) to those who are prominent in their country's cause, against the great danger of false accusers and iniquitous judges.[2] It provides that all persons indicted for high treason should have a copy of their indictment delivered to them five days before their trial, a period extended by a

[1] State Trials, xii. 1245. Ralph, 420. Somers Tracts, x. 472. The Jacobites took a very frivolous objection to the conviction of Anderton, that printing could not be treason within the statute of Edward III., because it was not invented for a century afterwards. According to this rule, it could not be treason to shoot the king with a pistol, or poison him with an American drug.

[2] Parl. Hist. 965. Journ. 17. Feb. 1696. Stat. 7 W. 3. c. 3. Though the court opposed this bill, it was certainly favoured by the zealous whigs, as much as by the opposite party.

subsequent act to ten days, and a copy of the pannel of jurors two days before their trial; that they shall be allowed to have witnesses examined on oath, and to make their defence by counsel. It clears up any doubt that could be pretended on the statute of Edward VI., by requiring two witnesses, either both to the same overt act, or the first to one, and the second to another overt act of the same treason (that is, the same kind of treason), unless the party shall voluntarily confess the charge.[1] It limits prosecutions for treason to the term of three years, except in the case of an attempted assassination on the king. It includes the contested provision for the trial of peers by all who have a right to sit and vote in parliament. A later statute, 7 Anne, c. 21., which may be mentioned here as the complement of the former, has added a peculiar privilege to the accused, hardly less material than any of the rest. Ten days before the trial, a list of the witnesses intended to be brought for proving the indictment, with their professions and places of abode, must be delivered to the prisoner, along with the copy of the indictment. The operation of this clause was suspended till after the death of the pretended prince of Wales.

Notwithstanding a hasty remark of Burnet, that the design of this bill seemed to be to make men as safe in all treasonable practices as possible, it ought to be considered a valuable accession to our constitutional law; and no part, I think, of either statute will be reckoned inexpedient, when we reflect upon the history of all nations, and more especially of our own. The history of all nations, and more especially of our own, in the fresh recollection of those who took a share in these acts, teaches us that false accusers are always encouraged by a bad government, and may easily deceive a good one. A prompt belief in the spies whom they perhaps necessarily employ, in the voluntary informers who dress up probable falsehoods, is so natural and constant in the offices of ministers, that the best are to be heard with suspicion when they bring forward such testimony. One instance at least had occurred since the revolution, of charges unquestionably false in their specific details, preferred against men of eminence by impostors who panted for the laurels of Oates and Turberville. (State Trials, xii. 1051.) And as men who are accused of conspiracy against a government are generally such as are beyond question disaffected to it, the indiscriminating temper of the prejudging people, from whom juries must be taken, is as much to be apprehended, when it happens to be favourable to authority, as that of the government itself; and requires as much the best securities, imperfect as the best are, which prudence and patriotism can furnish to innocence. That the prisoner's witnesses should be examined on oath will of course not be disputed, since by a subsequent statute, that strange and unjust anomaly in our criminal law has been removed in all cases as well as in treason; but the judges had sometimes not been ashamed to point out to the jury, in

[1] When several persons of distinction were arrested on account of a Jacobite conspiracy in 1690, there was but one witness against some of them. The judges were consulted, whether they could be indicted for a high misdemeanour on this single testimony, as Hampden had been in 1685; the attorney-general Treby maintaining this to be lawful. Four of the judges were positively against this, two more doubtfully the same way, one altogether doubtful, and three in favour of it. The scheme was very properly abandoned; and at present I suppose, nothing can be more established than the negative. Dalrymple, Append. 186.

derogation of the credit of those whom a prisoner called in his behalf, that they were not speaking under the same sanction as those for the crown. It was not less reasonable that the defence should be conducted by counsel: since that excuse which is often made for denying the assistance of counsel on charges of felony, namely, the moderation of prosecutors and the humanity of the bench, could never be urged in those political accusations wherein the advocates for the prosecution contend with all their strength for victory; and the impartiality of the court is rather praised when it is found than relied upon beforehand.[1] Nor does there lie any sufficient objection even to that which many dislike, the furnishing a list of the witnesses to the prisoner, when we set on the other side the danger of taking away innocent lives by the testimony of suborned and infamous men, and remember also that a guilty person can rarely be ignorant of those who will bear witness against him; or if he could, that he may always discover those who have been examined before the grand jury, and that no others can in any case be called on the trial.

The subtlety of the crown lawyers in drawing indictments for treason, and the willingness of judges to favour such prosecutions, have considerably eluded the chief difficulties which the several statutes appear to throw in their way. The government has at least had no reason to complain that the construction of those enactments has been too rigid. The overt acts laid in the indictment are expressed so generally that they give sometimes little insight into the particular circumstances to be adduced in evidence; and, though the act of William is positive that no evidence shall be given of any overt act not laid in the indictment, it has been held allowable, and is become the constant practice, to bring forward such evidence, not as substantive charges, but on the pretence of its tending to prove certain other acts specially alleged. The disposition to extend a constructive interpretation to the statute of Edward III. has continued to increase; and was carried, especially by the chief-justice Eyre in the trials of 1794, to a length at which we lose sight altogether of the plain meaning of words, and apparently much beyond what Pemberton or even Jefferies had reached. In the vast mass of circumstantial testimony which our modern trials for high treason display, it is sometimes difficult to discern whether the great principle of our law, requiring two witnesses to overt acts, has been adhered to; for certainly it is not adhered to, unless such witnesses depose to the acts of the prisoner, from which an inference of his guilt is immediately deducible.[2] There can be no doubt that state prosecutions have long been conducted with an urbanity and

[1] The dexterity with which lord Shaftesbury (the author of the Characteristics), at that time in the house of commons, turned a momentary confusion which came upon him while speaking on this bill, into an argument for extending the aid of counsel to those who might so much more naturally be embarrassed on a trial for their lives, is well known. All well-informed writers ascribe this to Shaftesbury. But Johnson, in the Lives of the Poets, has, through inadvertence, as I believe, given lord Halifax (Montagu) the credit of it; and some have since followed him. As a complete refutation of this mistake, it is sufficient to say, that Mr. Montagu *opposed* the bill. His name appears as a teller on two divisions, 31. December, 1691, and 18 November, 1692.

[2] It was said by Scroggs and Jefferies, that if one witness prove that A. bought a knife, and another that he intended to kill the king with it, these are two witnesses within the statute of Edward VI. But this has been justly reprobated.

exterior moderation unknown to the age of the Stuarts, or even that of William; but this may by possibility be compatible with very partial wresting of the law, and the substitution of a sort of political reasoning for that strict interpretation of penal statutes which the subject has a right to demand. No confidence in the general integrity of a government, much less in that of its lawyers, least of all any belief in the guilt of an accused person, should beguile us to remit that vigilance which is peculiarly required in such circumstances.[1]

For this vigilance, and indeed for almost all that keeps up in us, permanently and effectually, the spirit of regard to liberty and the public good, we must look to the unshackled and independent energies of the press. In the reign of William III., and through the influence of the popular principle in our constitution, this finally became free. The licensing act, suffered to expire in 1679, was revived in 1685 for seven years. In 1692, it was continued till the end of the session of 1693. Several attempts were afterwards made to renew its operation, which the less courtly whigs combined with the tories and Jacobites to defeat.[2] Both parties indeed employed the press with great diligence in this reign; but while one degenerated into malignant calumny and misrepresentation, the signal victory of liberal principles is manifestly due to the boldness and eloquence with which they were promulgated. Even during the existence of a censorship, a host of unlicensed publications, by the negligence or connivance of the officers employed to seize them, bore witness to the inefficacy of its restrictions. The bitterest invectives of Jacobitism were circulated in the first four years after the revolution.[3]

The liberty of the press consists, in a strict sense, merely in an exemption from the superintendence of a licenser. But it cannot be said to exist in any security, or sufficiently for its principal ends, where discussions of a political or religious nature, whether general or particular, are restrained by too narrow and severe limitations. The law of libel has always been indefinite; an evil probably beyond any complete remedy, but which evidently renders the liberty of free discussion rather more precarious in its exercise than might be wished. It appears to have been the received doctrine in Westminster-Hall before the revolution, that no man might publish a writing reflecting on the government, nor upon the character, or even capacity and fitness, of any one employed in it. Nothing having passed to change the law, the law remained as before. Hence in the case of Tutchin, it is laid down by Holt, that to possess the people with an ill opinion of the government, that is, of the ministry, is a libel. And the attorney-general, in his speech for the prosecution, urges that there can be no

[1] Upon some of the topics touched in the foregoing pages, besides Hale and Foster, see Luders' Considerations on the Law of Treason in Levying War, and many remarks in Phillipps's State Trials, Reviewed; besides much that is scattered through the notes of Mr. Howell's great collection. Mr. Phillipps's work, however, was not published till after my own was written.

[2] Com. Journs. 9 Jan. and 11 Feb. 1694-95. A bill to the same effect sent down from the lords was thrown out, 17 April, 1695. Another bill was rejected on the second reading in 1697. Id. 3 April.

[3] Somers Tracts, passim. John Dunton the bookseller, in the History of his Life and Errors, hints that unlicensed books could be published by a douceur to Robert Stephens, the messenger of the press, whose business it was to inform against them.

reflection on those that are in office under her majesty, but it must cast some reflection on the queen who employs them. Yet in this case the censure upon the administration, in the passages selected for prosecution, was merely general, and without reference to any person, upon which the counsel for Tutchin vainly relied.[1]

It is manifest that such a doctrine was irreconcilable with the interests of any party out of power, whose best hope to regain it is commonly by prepossessing the nation with a bad opinion of their adversaries. Nor would it have been possible for any ministry to stop the torrent of a free press, under the secret guidance of a powerful faction, by a few indictments for libel. They found it generally more expedient and more agreeable to borrow weapons from the same armoury, and retaliate with unsparing invective and calumny. This was first practised (first, I mean, with the avowed countenance of government) by Swift in the Examiner, and some of his other writings. And both parties soon went such lengths in this warfare, that it became tacitly understood that the public character of statesmen, and the measures of administration, are the fair topics of pretty severe attack. Less than this indeed would not have contented the political temper of the nation, gradually and without intermission becoming more democratical, and more capable, as well as more accustomed, to judge of its general interests, and of those to whom they were intrusted. The just limit between political and private censure has been far better drawn in these later times, licentious as we still may justly deem the press, than in an age when courts of justice had not deigned to acknowledge, as they do at present, its theoretical liberty. No writer, except of the most broken reputation, would venture at this day on the malignant calumnies of Swift.

Meanwhile the judges naturally adhered to their established doctrine; and, in prosecutions for political libels, were very little inclined to favour what they deemed the presumption, if not the licentiousness, of the press. They advanced a little farther than their predeccssors; and, contrary to the practice both before and after the revolution, laid it down at length as an absolute principle, that falsehood, though always alleged in the indictment, was not essential to the guilt of the libel; refusing to admit its truth to be pleaded, or given in evidence, or even urged by way of mitigation of punishment.[2] But as the defendant could only be convicted by the verdict of a jury, and jurors both partook of the general sentiment in favour of free discussion, and might in certain cases have acquired some prepossessions as to the real truth of the supposed libel, which the court's refusal to enter upon

[1] State Trials, xiv. 1103. 1128. Mr. Justice Powell told the Rev. Mr. Stephens, in passing sentence on him for a libel on Harley and Marlborough, that to traduce on the queen's ministers was a reflection on the queen herself. It is said however that this and other prosecutions were generally blamed; for the public feeling was strong in favour of the liberty of the press. Boyer's Reign of Queen Anne, p. 286.

[2] Pemberton, as I have elsewhere observed, permitted evidence to be given as to the truth of an alleged libel in publishing that sir Edmondbury Godfrey had murdered himself. And what may be reckoned more important, in a trial of the famous Fuller on a similar charge, Holt repeatedly (not less than five times) offered to let him prove the truth if he could. State Trials, xiv. 534. But, on the trial of Franklin, in 1731, for publishing a libel in the Craftsman, lord Raymond positively refused to admit of any evidence to prove the matters to be true; and said he was only abiding by what had been formerly done in other cases of the like nature. Id. xvii. 659.

it could not remove, they were often reluctant to find a verdict of guilty; and hence arose by degrees a sort of contention which sometimes showed itself upon trials, and divided both the profession of the law and the general public. The judges and lawyers, for the most part, maintained that the province of the jury was only to determine the fact of publication; and also whether what are called the innuendoes were properly filled up, that is whether the libel meant that which it was alleged in the indictment to mean, not whether such meaning were criminal or innocent, a question of law which the court were exclusively competent to decide. That the jury might acquit at their pleasure was undeniable; but it was asserted that they would do so in violation of their oaths and duty, if they should reject the opinion of the judge by whom they were to be guided as to the general law. Others of great name in our jurisprudence, and the majority of the public at large, conceiving that this would throw the liberty of the press altogether into the hands of the judges, maintained that the jury had a strict right to take the whole matter into their consideration, and determine the defendant's criminality or innocence according to the nature and circumstances of the publication. This controversy, which perhaps hardly arose within the period to which the present work relates, was settled by Mr. Fox's libel bill in 1792. It declares the right of the jury to find a general verdict upon the whole matter: and though, from causes easy to explain, it is not drawn in the most intelligible and consistent manner, was certainly designed to turn the defendant's intention, as it might be laudable or innocent, seditious or malignant, into a matter of fact for their inquiry and decision.

The revolution is justly entitled to honour as the era of religious in a far greater degree than of civil liberty; the privileges of conscience having no earlier magna charta and petition of right whereto they could appeal against encroachment. Civil, indeed, and religious liberty had appeared, not as twin sisters and co-heirs, but rather in jealousy and selfish rivalry; it was in despite of the law, it was through infringment of the constitution, by the court's connivance, by the dispensing prerogative, by the declarations of indulgence under Charles and James, that some respite had been obtained from the tyranny which those who proclaimed their attachment to civil rights had always exercised against one class of separatists, and frequently against another.

At the time when the test law was enacted, chiefly with a view against popery, but seriously affecting the protestant nonconformists, it was the intention of the house of commons to afford relief to the latter by relaxing in some measure the strictness of the act of uniformity in favour of such ministers as might be induced to conform, and by granting an indulgence of worship to those who should persist in their separation. This bill however dropped in that session. Several more attempts at an union were devised by worthy men of both parties in that reign, but with no success. It was the policy of the court to withstand a comprehension of dissenters; nor would the bishops admit of any concession worth the other's acceptance. The high-church party would not endure any mention of indulgence.[1] In the parliament

[1] See the pamphlets of that age, passim. One of these, entitle The Zealous and Impartial Protestant, 1681, the author of which, though well-known, I cannot recollect, after much in-

of 1680, a bill to relieve protestant dissenters from the penalties of the 35th of Elizabeth, the most severe act in force against them, having passed both houses, was lost off the table of the house of lords, at the moment that the king came to give his assent; an artifice by which he evaded the odium of an explicit refusal. (Parl. Hist. iv. 1311. Ralph, 559.) Meanwhile the nonconforming ministers, and in many cases their followers, experienced a harassing persecution under the various penal laws that oppressed them; the judges, especially in the latter part of this reign, when some good magistrates were gone, and still more the justices of the peace, among whom a high-church ardour was prevalent, crowding the gaols with the pious confessors of puritanism. (Baxter; Neal; Palmer's Nonconformist's Memorial.) Under so rigorous an administration of statute law, it was not unnatural to take the shelter offered by the declaration of indulgence; but the dissenters never departed from their ancient abhorrence of popery and arbitrary power, and embraced the terms of reconciliation and alliance which the church, in its distress, held out to them. A scheme of compre-

vective, says, "Liberty of conscience and toleration are things only to be talked of and pretended to by those that are under; but none like or think it reasonable that are in authority. 'Tis an instrument of mischief and dissettlement, to be courted by those who would have change, but no way desirable by such as would be quiet, and have the government undisturbed. For it is not consistent with public peace and safety without a standing army; conventicles being eternal nurseries of sedition and rebellion." p. 30. "To strive for toleration," he says in another place, "is to contend against all government. It will come to this; whether there should be a government in the church or not? for if there be a government there must be a laws; if there be laws, there must be penalties annexed to the violation of those laws; otherwise the government is precarious and at every man's mercy; that is, it is none at all. . . . The constitution should be made firm, whether with any alterations or without them, and laws put in punctual vigorous execution. Till that is done all will signify nothing. The church hath lost all through remissness and non-execution of laws; and by the contrary course things must be reduced, or they never will. To what purpose are parliaments so concerned to prepare good laws, if the officers who are intrusted wit the execution neglect that duty, and let them lie dead? This brings laws and government into contempt, and it were much better the laws were never made; by these the dissenters are provoked, and being not restrained by the exacting of the penalties, they are fiercer and more bent upon their own ways than they would be otherwise. But it may be said the execution of laws of conformity raiseth the cry of persecution; and will not that be scandalous? Not so scandalous as anarchy, schism, and eternal divisions and confusions both in church and state. Better that the unruly should clamour, than that the regular should groan, and all should be undone." p. 33. Another tract, "Short Defence of the Church and Clergy of England, 1679," declares for union (in his own way), but against a comprehension, and still more a toleration. "It is observable that whereas the best emperors had made the severest laws against all manner of sectaries, Julian the apostate, the most subtle and bitter enemy that Christianity ever had, was the man that set up this way of toleration." p. 87. Such was the temper of this odious faction. And at the time they were instigating the government to fresh severities, by which, I sincerely believe, they meant the pillory or the gallows (for nothing else was wanting), scarce a gaol in England was without nonconformist ministers. One can hardly avoid rejoicing that some of these men, after the revolution, experienced, not indeed the persecution, but the poverty they had been so eager to inflict on others.

The following passage from a very judicious tract on the other side, "Discourse of the Religion of England, 1667," may deserve to be extracted:—"Whether cogent reason speaks for this latitude, be it now considered. How momentous in the balance of this nation those protestants are which are dissatisfied, in the present ecclesiastical polity. They are every where spread through city and country; they make no small part of all ranks and sorts of men; by relations and commerce they are so woven into the nation's interest, that it is not easy to sever them without unravelling the whole. They are not excluded from the nobility, among the gentry they are not a few; but none are of more importance than they in the trading part of the people and those that live by industry, upon whose hands the business of the nation lies much. It hath been noted that some who bear them no good will have said that the very air of corporations is infested with their contagion. And in whatsoever degree they are high or low, ordinarily for good understanding, steadiness and sobriety, they are not inferior to others of the same rank and quality; neither do they want the national courage of Englishmen." p. 23.

hension was framed under the auspices of archbishop Sancroft before the revolution. Upon the completion of the new settlement it was determined, with the apparent concurrence of the church, to grant an indulgence to separate conventicles, and at the same time, by enlarging the terms of conformity, to bring back those whose differences were not irreconcilable within the pale of the Anglican communion.

The act of toleration was passed with little difficulty, though not without the murmurs of the bigoted churchmen.[1] It exempts from the penalties of existing statutes against separate conventicles, or absence from the established worship, such as should take the oath of allegiance, and subscribe the declaration against popery, and such ministers of separate congregations as should subscribe the thirty-nine articles of the church of England, except three, and part of a fourth. It gives also an indulgence to quakers without this condition. Meeting-houses are required to be registered, and are protected from insult by a penalty. No part of this toleration is extended to papists, or to such as deny the Trinity. We may justly deem this act a very scanty measure of religious liberty; yet it proved more effectual through the lenient and liberal policy of the eighteenth century; the subscription to articles of faith, which soon became as obnoxious as that to matters of a more indifferent nature, having been practically dispensed with, though such a genuine toleration as Christianity and philosophy alike demand, had no place in our statute-book before the reign of George III.

It was found more impracticable to overcome the prejudices which stood against any enlargement of the basis of the English church. The bill of comprehension, though nearly such as had been intended by the primate, and conformable to the plans so often in vain devised by the most wise and moderate churchmen, met with a very cold reception. Those among the clergy who disliked the new settlement of the crown (and they were by far the greater part), played upon the ignorance and apprehensions of the gentry. The king's suggestion in a speech from the throne, that means should be found to render all protestants capable of serving him in Ireland, as it looked towards a repeal or modification of the test act, gave offence to the zealous churchmen. (Burnet. Parl. Hist. 184.) A clause proposed in the bill for changing the oaths of supremacy and allegiance, in order to take away the necessity of receiving the sacrament in the church, as a qualification for office, was rejected by a great majority of the lords, twelve whig peers protesting. (Parl. Hist. 196.) Though the bill of comprehension proposed to parliament went no farther than to leave a few scrupled ceremonies at discretion, and to admit presbyterian ministers into the church without pronouncing on the invalidity of their former ordination, it was mutilated in passing through the upper house; and the commons, after entertaining it for a time, substituted an address to the king, that he would call the houses of convocation, "to be advised with in ecclesiastical matters." (Ibid. 212. 216.) It was of course necessary to follow this recommendation. But the lower house of convocation, as might be foreseen, threw every obstacle in the way of the king's enlarged policy. They chose a man as their prolocutor who had been

[1] Parl. Hist. v. 263. Some of the tories wished to pass it only for seven years. The high-church pamphlets of the age grumble at the toleration

forward in the worst conduct of the university of Oxford. They displayed in everything a factious temper, which held the very names of concession and conciliation in abhorrence. Meanwhile a commission of divines, appointed under the great seal, had made a revision of the liturgy, in order to eradicate every thing which could give a plausible ground of offence, as well as to render the service more perfect. Those of the high-church faction had soon seceded from this commission; and its deliberations were doubtless the more honest and rational for their absence. But, as the complacence of parliament towards ecclesiastical authority had shown that no legislative measure could be forced against the resistance of the lower house of convocation, it was not thought expedient to lay before that synod of insolent priests the revised liturgy, which they would have employed as an engine of calumny against the bishops and the crown. The scheme of comprehension, therefore, fell absolutely and finally to the ground.[1]

A similar relaxation of the terms of conformity would, in the reign of Elizabeth, or even at the time of the Savoy conferences, have brought back so large a majority of dissenters that the separation of the remainder could not have afforded any colour of alarm to the most jealous dignitary. Even now it is said that two thirds of the nonconformists would have embraced the terms of re-union. But the motives of dissent were already somewhat changed, and had come to turn less on the petty scruples of the elder puritans, than on a dislike to all subscriptions of faith and compulsory uniformity. The dissenting ministers, accustomed to independence, and finding not unfrequently in the contributions of their disciples a better maintenance than court favour and private patronage have left for diligence and piety in the establishment, do not seem to have much regretted the fate of this measure. None of their friends, in the most favourable times, have ever made an attempt to renew it. There are, indeed, serious reasons why the boundaries of religious communion should be as widely extended as is consistent with its end and nature; and among these the hardship and detriment of excluding conscientious men from the ministry is not the least. Nor is it less evident that from time to time, according to the progress of knowledge and reason, to remove defects and errors from the public service of the church, even if they have not led to scandal or separation, is the bounden duty of its governors. But none of these considerations press much on the minds of statesmen; and it was not to be expected that any administration should prosecute a religious reform for its own sake, at the hazard of that tranquillity and exterior unity which is in general the sole end for which they would deem such a reform worth attempting. Nor could it be dissembled that, so long as the endowments of a national church are supposed to require a sort of politic organization within the commonwealth, and a busy spirit of faction for their security, it will be convenient for the governors of the state, whenever they find this spirit adverse to them, as it was at the revolution, to preserve the strength of the dissenting sects as a counterpoise to that dangerous influence, which in protestant churches, as well as that of Rome, has sometimes set up the interest of one order against

[1] Burnet. Ralph. But a better account of what took place in the convocation and among the commissioners will be found in Kennet's Compl. Hist. 557. 588. &c.

that of the community. And though the church of England made a high vaunt of her loyalty, yet, as lord Shrewsbury told William of the tories in general, he must remember that he was not their king; of which indeed he had abundant experience.

A still more material reason against any alteration in the public liturgy and ceremonial religion at that feverish crisis, unless with a much more decided concurrence of the nation than could be obtained, was the risk of nourishing the schism of the non-jurors. These men went off from the church on grounds merely political, or at most on the pretence that the civil power was incompetent to deprive bishops of their ecclesiastical jurisdiction; to which none among the laity, who did not adopt the same political tenets, were likely to pay attention. But the established liturgy was, as it is at present, in the eyes of the great majority, the distinguishing mark of the Anglican church, far more indeed than episcopal government, whereof so little is known by the mass of the people that its abolition would make no perceptible difference in their religion. Any change, though for the better, would offend those prejudices of education and habit, which it requires such a revolutionary commotion of the public mind as the sixteenth century witnessed, to subdue, and might fill the jacobite conventicles with adherents to the old church. It was already the policy of the non-juring clergy to hold themselves up in this respectable light, and to treat the Tillotsons and Burnets as equally schismatic in discipline and unsound in theology. Fortunately however they fell into the snare which the established church had avoided; and deviating, at least in their writings, from the received standard of Anglican orthodoxy, into what the people saw with most jealousy, a sort of approximation to the church of Rome, gave their opponents an advantage in controversy, and drew farther from that part of the clergy who did not much dislike their political creed. They were equally injudicious and neglectful of the signs of the times, when they promulgated such extravagant assertions of sacerdotal power as could not stand with the regal supremacy, or any subordination to the state. It was plain, from the writings of Leslie and other leaders of their party, that the mere restoration of the house of Stuart would not content them, without undoing all that had been enacted as to the church from the time of Henry VIII.; and thus the charge of innovation came evidently home to themselves.[1]

The convention parliament would have acted a truly politic, as well as magnanimous, part in extending this boon, or rather this right, of religious liberty to the members of that unfortunate church, for whose sake the late king had lost his throne. It would have displayed to mankind that James had fallen, not as a catholic, nor for seeking to bestow toleration on catholics, but as a violator of the constitution. William, in all things superior to his subjects, knew that temporal, and

[1] Leslie's Case of the Regale and Pontificate is a long dull attempt to set up the sacerdotal order above all civil power, at least as to the exercise of its functions, and especially to get rid of the appointment of bishops by the crown, or, by parity of reasoning, of priests by laymen. He is indignant even at laymen choosing their chaplains, and thinks they ought to take them from the bishop; objecting also to the phrase, my chaplain, as if they were servants: "otherwise the expression is proper enough to say my chaplain, as I say my parish priest, my bishop, my king, or my God; which argues my being under their care and direction, and that I belong to them, not they to me." p 182. It is full of enormous misrepresentation as to the English law

especially military fidelity, would be in almost every instance proof against the seductions of bigotry. The Dutch armies have always been in a great measure composed of catholics; and many of that profession served under him in the invasion of England. His own judgment for the repeal of the penal laws had been declared even in the reign of James. The danger, if any, was now immensely diminished; and it appears in the highest degree probable that a genuine toleration of their worship, with no condition but the oath of allegiance, would have brought over the majority of that church to the protestant succession, so far at least as to engage in no schemes inimical to it. The wiser catholics would have perceived that, under a king of their own faith, or but suspected of an attachment to it, they must continue the objects of perpetual distrust to a protestant nation. They would have learned that conspiracy and jesuitical intrigue could but keep alive calumnious imputations, and diminish the respect which a generous people would naturally pay to their sincerity and their misfortune. Had the legislators of that age taken a still larger sweep, and abolished at once those tests and disabilities, which, once necessary bulwarks against an insidious court, were no longer demanded in the more republican model of our government, the jacobite cause would have suffered, I believe, a more deadly wound than penal statutes and double taxation were able to inflict. But this was beyond the philosophers, how much beyond the statesmen, of the time!

The tories, in their malignant hatred of our illustrious monarch, turned his connivance at popery into a theme of reproach.[1] It was believed, and probably with truth, that he had made to his catholic allies promises of relaxing the penal laws; and the jacobite intriguers had the mortification to find that William had his party at Rome, as well as her exiled confessor of St. Germain's. After the peace of Ryswick many priests came over, and showed themselves with such incautious publicity as alarmed the bigotry of the house of commons, and produced the disgraceful act of 1700 against the growth of popery.[2] The admitted aim of this statute was to expel the catholic proprietors of land, comprising many very ancient and wealthy families, by rendering it necessary for them to sell their estates. It first offers a reward of 100*l.* to any informer against a priest exercising his functions, and adjudges the penalty of perpetual imprisonment. It requires every person educated in the popish religion, or professing the same, within

[1] See Burnet (Oxford iv. 409.) and lord Dartmouth's note.

[2] No opposition seems to have been made in the house of commons; but we have a protest from four peers against it. Burnet, though he offers some shameful arguments in favour of the bill, such as might justify any tyranny, admits that it contained some unreasonable severities, and that many were really adverse to it. A bill proposed in 1705, to render the late act against papists effective, was lost by 119 to 43 (Parl. Hist. vi. 514.); which shows that men were ashamed of what they had done. A proclamation, however, was issued in 1711, immediately after Guiscard's attempt to kill Mr. Harley, for enforcing the penal laws against Roman catholics, which was very scandalous, as tending to impute that crime to them. Boyer's Reign of Anne, p. 429. And in the reign of Geo. I. (1722) 100,000*l.* was levied by a particular act on the estates of papists and non-jurors. This was only carried by 188 to 172; sir Joseph Jekyll, and Mr. Onslow, afterwards speaker, opposing it, as well as lord Cowper in the other house. 9 G. 1. c. 18. Parl. Hist. viii. 51. 353. It was quite impossible that those who sincerely maintained the principles of toleration should long continue to make any exception; though the exception in this instance was wholly on political grounds, and not out of bigotry, it did not the less contravene all that Taylor and Locke had taught men to cherish.

six months after he shall attain the age of eighteen years, to take the oaths of allegiance and supremacy, and subscribe the declaration set down in the act of Charles II. against transubstantiation and the worship of saints; in default of which he is incapacitated, not only to purchase, but to inherit or take lands under any devise or limitation. The next of kin being a protestant shall enjoy such lands during his life.[1] So unjust, so unprovoked a persecution is the disgrace of that parliament. But the spirit of liberty and tolerance was too strong for the tyranny of the law; and this statute was not executed according to its purpose. The catholic landholders neither renounced their religion, nor abandoned their inheritances. The judges put such constructions upon the clause of forfeiture as eluded its efficacy; and, I believe, there were scarce any instances of a loss of property under this law. It has been said, and I doubt not with justice, that the catholic gentry, during the greater part of the eighteenth century, were as a separated and half proscribed class among their equals, their civil exclusion hanging over them in the intercourse of general society (Butler's Memoirs of Catholics, ii. 64.); but their notorious, though not unnatural, disaffection to the reigning family will account for much of this, and their religion was undoubtedly exercised with little disguise or apprehension. The laws were perhaps not much less severe and sanguinary than those which oppressed the protestants of France; but, in their actual administration, what a contrast between the government of George II. and Louis XV., between the gentleness of an English court of king's bench, and the ferocity of the parliaments of Aix and Thoulouse!

The immediate settlement of the crown at the revolution extended only to the descendants of Anne and of William. The former was at that time pregnant, and became in a few months the mother of a son. Nothing therefore urged the convention-parliament to go any farther in limiting the succession. But the king, in order to secure the elector of Hanover to the grand alliance, was desirous to settle the reversion of the crown on his wife the princess Sophia and her posterity. A provision to this effect was inserted in the bill of rights by the house of lords. But the commons rejected the amendment with little opposition; not, as Burnet idly insinuates, through the secret wish of a republican party (which never existed, or had no influence) to let the monarchy die a natural death, but from a just sense that the provision was unnecessary and might become inexpedient.[2] During the life of the young duke of Gloucester the course of succession appeared clear. But upon his untimely death in 1700, the manifest improbability that the limitations already established could subsist beyond the lives of the king and princess of Denmark made it highly convenient to preclude intrigue, and cut off the hopes of the jacobites, by a new settlement of the crown on a protestant line of princes. Though the choice was

[1] 11 & 12 W. III. c. 4. It is hardly necessary to add, that this act was repealed in 1779.

[2] While the bill regulating the succession was in the house of commons, a proviso was offered by Mr. Godolphin, that nothing in this act is intended to be drawn into example or consequence hereafter, to prejudice the right of any protestant prince or princess in their hereditary succession to the imperial crown of those realms. This was much opposed by the whigs; both because it tended to let in the son of James II., if he should become a protestant, and for a more secret reason, that they did not like to recognise the continuance of any hereditary right. It was rejected by 179 to 125. Parl. Hist. v. 249. The lords' amendment in favour of the princess Sophia was lost without a division. Id. 339.

truly free in the hands of parliament, and no pretext of absolute right could be advanced on any side, there was no question that the princess Sophia was the fittest object of the nation's preference. She was indeed very far removed from any hereditary title. Besides the pretended prince of Wales, and his sister, whose legitimacy no one disputed, there stood in her way the duchess of Savoy, daughter of Henrietta duchess of Orleans, and several of the Palatine family. These last had abjured the reformed faith, of which their ancestors had been the strenuous assertors; but it seemed not improbable that some one might return to it; and, if all hereditary right of the ancient English royal line, the descendants of Henry VII., had not been extinguished, it would have been necessary to secure the succession of any prince, who should profess the protestant religion at the time when the existing limitations should come to an end. Nor indeed, on the supposition that the next heir had a right to enjoy the crown, would the act of settlement have been required.[1] According to the tenor and intention of this statute, all prior claims of inheritance, save that of the issue of king William and the princess Anne, being set aside and annulled, the princess Sophia became the source of a new royal line. The throne of England and Ireland, by virtue of the paramount will of parliament, stands entailed upon the heirs of her body, being protestants. In them the right is as truly hereditary as it ever was in the Plantagenets or the Tudors. But they derive it not from those ancient families. The blood indeed of Cerdic and of the Conqueror flows in the veins of his present majesty. Our Edwards and Henries illustrate the almost unrivalled splendour and antiquity of the house of Brunswic. But they have transmitted no more right to the allegiance of England than Boniface of Este or Henry the Lion. That rests wholly on the act of settlement, and resolves itself into the sovereignty of the legislature. We have therefore an abundant security that no prince of the house of Brunswic will ever countenance the silly theories of imprescriptible right, which flattery and superstition seem still to render current in other countries. He would brand his own brow with the names of upstart and usurper. For the history of the revolution, and of that change in the succession which ensued upon it, will for ages to come be fresh and familiar as the recollections of yesterday. And if the people's choice be, as surely it is, the primary foundation of magistracy, it is perhaps more honourable to be nearer the source, than to deduce a title from some obscure chieftain, through a long roll of tyrants and idiots.

The majority of that house of commons which passed the bill of settlement consisted of those who having long opposed the administration of William, though with very different principles both as to the succession of the crown and its prerogative, were now often called by the general name of tories. Some, no doubt, of these were adverse to a measure which precluded the restoration of the house of Stuart, even on the contingency that its heir might embrace the protestant religion. But this party could not show itself very openly; and Harley, the new leader of the tories, zealously supported the entail of the crown on the

[1] The duchess of Savoy put in a very foolish protest against any thing that should be done to prejudice *her* right. Raloh, 924.

princess Sophia. But it was determined to accompany this settlement with additional securities for the subject's liberty. The bill of rights was reckoned hasty and defective; some matters of great importance had been omitted, and in the twelve years which had since elapsed, new abuses had called for new remedies. Eight articles were therefore inserted in the act of settlement, to take effect only from the commencement of the new limitation to the house of Hanover. Some of them, as will appear, sprung from a natural jealousy of this unknown and foreign line; some should strictly not have been postponed so long; but it is necessary to be content with what it is practicable to obtain. These articles are the following:—

That whosoever shall hereafter come to the possession of this crown, shall join in communion with the church of England as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament.

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.

That, after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging, (although he be naturalized or made a denizen—except such as are born of English parents,) shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the crown, to himself, or to any other or others in trust for him.

That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

That, after the said limitation shall take effect as aforesaid, judges' commissions be made quamdiu se bene gesserint, and their salaries ascertained and established; but, upon the address of both houses of parliament, it may be lawful to remove them.

That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament. (12 & 13 W. III. c. 2.)

The first of these provisions was well adapted to obviate the jealousy which the succession of a new dynasty, bred in a protestant church not altogether agreeing with our own, might excite in our susceptible nation. A similar apprehension of foreign government produced the second article, which so far limits the royal prerogative that any minister who could be proved to have advised or abetted a declaration

of war in the specified contingency would be criminally responsible to parliament.[1] The third article was repealed very soon after the accession of George I., whose frequent journeys to Hanover were an abuse of the graciousness with which the parliament consented to annul the restriction. (1 G. I. c. 51.)

A very remarkable alteration that had been silently wrought in the course of the executive government gave rise to the fourth of the remedial articles in the act of settlement. According to the original constitution of our monarchy, the king had his privy council composed of the great officers of state, and of such others as he should summon to it, bound by an oath of fidelity and secrecy, by whom all affairs of weight, whether as to domestic or exterior policy, were debated for the most part in his presence, and determined, subordinately of course to his pleasure, by the vote of the major part. It could not happen but that some counsellors more eminent than the rest should form juntos or cabals, for more close and private management, or be selected as more confidential advisers of their sovereign; and the very name of a cabinet council as distinguished from the larger body, may be found as far back as the reign of Charles I. But the resolutions of the crown, whether as to foreign alliances or the issuing of proclamations and orders at home, or any other overt act of government, were not finally taken without the deliberation and assent of that body whom the law recognised as its sworn and notorious counsellors. This was first broken in upon after the restoration, and especially after the fall of Clarendon, a strenuous assertor of the rights and dignity of the privy council. "The king," as he complains, "had in his nature so little reverence and esteem for antiquity, and did in truth so much contemn old orders, forms, and institutions, that the objection of novelty rather advanced than obstructed any proposition." (Life of Clarendon, 319.) He wanted to be absolute on the French plan, for which both he and his brother, as the same historian tells us, had a great predilection, rather than obtain a power little less arbitrary, so far at least as private rights were concerned, on the system of his three predecessors. The delays and the decencies of a regular council, the continual hesitation of lawyers, whose cowardice renders them as unfit for crime as for virtue, were not suited to his temper, his talents, or his designs. And it must indeed be admitted that the privy council, even as it was then constituted, was too numerous for the practical administration of supreme power. Thus by degrees it became usual for the ministry or cabinet to obtain the king's final approbation of their measures, before they were laid, for a merely formal ratification, before the council. It

[1] It was frequently contended in the reign of George II. that subsidiary treaties for the defence of Hanover, or rather such as were covertly designed for that and no other purpose, as those with Russia and Hesse Cassel in 1755, were at least contrary to the spirit of the act of settlement. On the other hand it was justly answered that, although in case Hanover should be attacked on the ground of a German quarrel, unconnected with English politics, we were not bound to defend her; yet, if a power at war with England should think fit to consider that electorate as part of the king's dominion, which perhaps according to the law of nations might be done, our honour must require that it should be defended against such an attack. This is true; and yet it shows very forcibly that the separation of the two ought to have been insisted upon; since the present connexion engages Great Britain in a very disadvantageous mode of carrying on its wars, without any compensation of national wealth or honour; except indeed that of employing occasionally in its service a very brave and efficient body of troops.

was one object of sir William Temple's short-lived scheme in 1679 to bring back the ancient course; the king pledging himself on the formation of his new privy council to act in all things by its advice.

During the reign of William, this distinction of the cabinet from the privy council, and the exclusion of the latter from all business of state, became more fully established.[1] This however produced a serious consequence as to the responsibility of the advisers of the crown; and at the very time when the controlling and chastising power of parliament was most effectually recognised, it was silently eluded by the concealment in which the objects of its inquiry could wrap themselves. Thus, in the instance of a treaty which the house of commons might deem mischievous and dishonourable, the chancellor setting the great seal to it would of course be responsible; but it is not so evident that the first lord of the treasury, or others more immediately advising the crown on the course of foreign policy, could be liable to impeachment with any prospect of success, for an act in which their participation could not be legally proved. I do not mean that evidence may not possibly be obtained which would affect the leaders of the cabinet, as in the instances of Oxford and Bolingbroke; but that, the cabinet itself having no legal existence, and its members being surely not amenable to punishment in their simple capacity of privy counsellors, which they generally share, in modern times, with a great number even of their adversaries, there is no tangible character to which responsibility is attached; nothing, except a signature or the setting of a seal, from which a bad minister need entertain any further apprehension than that of losing his post and reputation.[2] It may be that no absolute corrective is practicable for this apparent deficiency in our constitutional security; but it is expedient to keep it well in mind, because all ministers speak loudly of their responsibility, and are apt, upon faith of this imaginary guarantee, to obtain a previous confidence from parliament which they may in fact abuse with impunity. For should the bad success or detected guilt of their measures raise a popular cry against them, and censure or penalty be demanded by their opponents, they will infallibly shroud their persons in the dark recesses of the

[1] "The method is this," says a member in debate; "things are concerted in the cabinet, and then brought to the council; such a thing is resolved in the cabinet, and brought and put on them for their assent, without showing any of the reasons. That has not been the method of England. If this method be, you will never know who gives advice." Parl. Hist. v. 731.

In sir Humphrey Mackworth's [or perhaps Mr. Harley's] Vindication of the Rights of the Commons of England, 1701, Somers' Tracts, xi. 246., the constitutional doctrine is thus laid down, according to the spirit of the recent act of settlement. "As to the setting of the great seal of England to foreign alliances, the lord chancellor, or lord keeper for the time being, has a plain rule to follow; that is, humbly to inform the king that he cannot legally set the great seal of England to a matter of that consequence unless the same be first debated and resolved in council; which method being observed, the chancellor is safe, and the council answerable." P. 293.

[2] This very delicate question as to the responsibility of the cabinet, or what is commonly called the ministry *in solidum*, if I may use the expression, was canvassed in a remarkabe discussion within our memory, on the introduction of the late chief-justice of the king's bench into that select body; Mr. Fox strenuously denying the proposition, and lord Castlereagh, with others now living, maintaining it. Parl. Debates, A.D., 1806. I cannot possibly comprehend how an article of impeachment for sitting as a cabinet minister could be drawn; nor do I conceive that a privy counsellor has a right to resign his place at the board; so that it would be highly unjust and illegal to presume a participation in culpable measures from the mere circumstance of belonging to it. Even if notoriety be a ground, as has been sometimes contended, for impeachment, it cannot be sufficient for conviction.

cabinet, and will employ every art to shift off the burthen of their individual liability.

William III., from the reservedness of his disposition as well as from the great superiority of his capacity for affairs to any of our former kings, was far less guided by any responsible counsellors than the spirit of our constitution requires. In the business of the partition treaty, which, whether rightly or otherwise, the house of commons reckoned highly injurious to the public interest, he had not even consulted his cabinet; nor could any minister, except the earl of Portland and lord Somers, be proved to have had a concern in the transaction; for, though the house impeached lord Orford and lord Halifax, they were not in fact any farther parties to it than by being in the secret, and the former had shown his usual intractability by objecting to the whole measure. This was undoubtedly such a departure from sound constitutional usage as left parliament no control over the executive administration. It was endeavoured to restore the ancient principle by this provision in the act of settlement, that, after the accession of the house of Hanover, all resolutions as to government should be debated in the privy council, and signed by those present. But, whether it were that real objections were found to stand in the way of this article, or that ministers shrunk back from so definite a responsibility, they procured its repeal a very few years afterwards. (4 Anne, c. 8. 6 Anne, c. 7.) The plans of government are discussed and determined in a cabinet council, forming indeed part of the larger body, but unknown to the law by any distinct character or special appointment. I conceive, though I have not the means of tracing the matter clearly, that this change has prodigiously augmented the direct authority of the secretaries of state, especially as to the interior department, who communicate the king's pleasure in the first instance to subordinate officers and magistrates, in cases which, down at least to the time of Charles I., would have been determined in council. But proclamations and orders still emanate, as the law requires, from the privy council; and on some rare occasions, even of late years, matters of domestic policy have been referred to their advice. It is generally understood, however, that no counsellor is to attend, except when summoned;[1] so that, unnecessarily numerous as the council has become, in order to gratify vanity by a titular honour, these special meetings consist only of a few persons besides the actual ministers of the cabinet, and give the latter no apprehension of a formidable resistance. Yet there can be no reasonable doubt that every counsellor is as much answerable for the measures adopted by his consent, and especially when ratified by his signature, as those who bear the name of ministers, and who have generally determined upon them before he is summoned.

The experience of William's partiality to Bentinck and Keppel, in the latter instance, not very consistent with the good sense and dignity of his character, led to a strong measure of precaution against the probable influence of foreigners under the new dynasty; the exclusion of

[1] This is the modern usage, but of its origin I cannot speak. On one remarkable occasion, while Anne was at the point of death, the dukes of Somerset and Argyle went down to the council-chamber without summons to take their seats; but it seems to have been intended as an unexpected manœuvre of policy.

all persons not born within the dominions of the British crown from every office of civil and military trust, and from both houses of parliament. No other country, as far as I recollect, has adopted so sweeping a disqualification; and it must, I think, be admitted that it goes a greater length than liberal policy can be said to warrant. But the narrow prejudices of George I. were well restrained by this provision from gratifying his corrupt and servile German favourites with lucrative offices.[1]

The next article is of far more importance; and would, had it continued in force, have perpetuated that struggle between the different parts of the legislature, especially the crown and house of commons, which the new limitations of the monarchy were intended to annihilate. The baneful system of rendering the parliament subservient to the administration, either by offices and pensions held at pleasure, or by more clandestine corruption, had not ceased with the house of Stuart. William, not long after his accession, fell into the worst part of this management, which it was most difficult to prevent; and, according to the practice of Charles's reign, induced by secret bribes the leaders of parliamentary opposition to betray their cause on particular questions. The tory patriot, sir Christopher Musgrave, trod in the steps of the whig patriot, sir Thomas Lee. A large expenditure appeared every year, under the head of secret service money; which was pretty well known, and sometimes proved, to be disposed of, in great part, among the members of both houses.[2] No check was put on the number or quality of placemen in the lower house. New offices were continually created, and at unreasonable salaries. Those who desired to see a regard to virtue and liberty in the parliament of England could not be insensible to the enormous mischief of this influence. If some apology might be offered for it in the precarious state of the revolution government, this did not take away the possibility of future danger, when the monarchy should have regained its usual stability. But in seeking for a remedy against the peculiar evil of the times, the party in opposition to the

[1] It is provided by 1 G. I. st. 2. c. 4. that no bill of naturalization shall be received without a clause disqualifying the party from sitting in parliament, &c. "for the better preserving the said clause in the said act entire and inviolate." This provision, which was rather supererogatory, was of course intended to show the determination of parliament not to be governed, ostensibly at least, by foreigners under their foreign master.

[2] Parl. Hist. 807. 840. Burnet says, p. 42., that sir John Trevor, a tory, first put the king on this method of corruption. Trevor himself was so venal that he received a present of 1000 guineas from the city of London, being then speaker of the commons, for his service in carrying a bill through the house; and, upon its discovery, was obliged to put the vote, that he had been guilty of a high crime and misdemeanour. This resolution being carried, he absented himself from the house, and was expelled. Parl. Hist. 900. Com. Journ. 12 Mar. 1694-5. The duke of Leeds, that veteran of secret iniquity, was discovered about the same time to have taken bribes from the East India Company, and was impeached in consequence; I say discovered, for there seems little or no doubt of his guilt. The impeachment however was not prosecuted for want of evidence. Parl. Hist. 881. 911. 933. Guy, secretary of the treasury, another of Charles II.'s court, was expelled the house on a similar imputation. Id. 886. Lord Falkland was sent to the Tower for begging 2000*l.* of the king. Id. 841. A system of infamous peculation among the officers of government came to light through the inquisitive spirit of parliament in this reign; not that the nation was worse and more corrupt than under the Stuarts, but that a profligacy, which had been engendered and had flourished under, their administration, was now dragged to light and punishment. Long sessions of parliament and a vigilant party-spirit exposed the evil, and have finally in a great measure removed it; though Burnet's remark is still not wholly obsolete. "The regard," says that honest bishop, "that is shown to the members of parliament among us, makes that few abuses can be inquired into or discovered."

court during this reign, whose efforts at reformation were too frequently misdirected, either through faction or some sinister regards towards the deposed family, went into the preposterous extremity of banishing all servants of the crown from the house of commons. Whether the bill for free and impartial proceedings in parliament, which was rejected by a very small majority of the house of lords in 1693, and having in the next session passed through both houses, met with the king's negative, to the great disappointment and displeasure of the commons, was of this general nature, or excluded only certain specified officers of the crown, I am not able to determine; though the prudence and expediency of William's refusal must depend entirely upon that question.[1] But in the act of settlement, the clause is quite without exception; and, if it had ever taken effect, no minister could have had a seat in the house of commons, to bring forward, explain, or defend the measures of the executive government. Such a separation and want of intelligence between the crown and parliament must either have destroyed the one, or degraded the other. The house of commons would either, in jealousy and passion, have armed the strength of the people to subvert the monarchy, or, losing that effective control over the appointment of ministers, which has sometimes gone near to their nomination, would have fallen almost into the condition of those states-general of ancient kingdoms, which have met only to be cajoled into subsidies, and give a passive consent to the propositions of the court. It is one of the greatest safeguards of our liberty, that eloquent and ambitious men, such as aspire to guide the councils of the crown, are from habit and use so connected with the houses of parliament, and derive from them so much of their renown and influence, that they lie under no temptation, nor could without insanity be prevailed upon, to diminish the authority and privileges of that assembly. No English statesman, since the revolution, can be liable to the very slightest suspicion of an aim, or even a wish, to establish absolute monarchy on the ruins of our constitution. Whatever else has been done, or designed to be done amiss, the rights of parliament have been out of danger. They have, whenever a man of powerful mind shall direct the cabinet, and none else can possibly be formidable, the strong security of his own interest, which no such man will desire to build on the caprice and intrigue of a court. And, as this immediate connexion of the advisers of the crown with the house of commons, so that they are, and ever profess themselves, as truly the servants of one as of the other, is a pledge for their loyalty to the entire legislature, as well as to their

[1] Parl. Hist. 748. 829. The house resolved, "that whoever advised the king not to give the royal assent to the act touching free and impartial proceedings in parliament, which was to redress a grievance, and take off a scandal upon the proceedings of the commons in parliament, is an enemy to their majesties and the kingdom." They laid a representation before the king, showing how few instances have been in former reigns of denying the royal assent to bills for redress of grievances, and the great grief of the commons "for his not having given the royal assent to several public bills, and particularly the bill touching free and impartial proceedings in parliament, which tended so much to the clearing the reputation of this house, after their having so freely voted to supply the public occasions." The king gave a courteous but evasive answer, as indeed it was natural to expect; but so great a flame was raised in the commons, that it was moved to address him for a further answer, which however there was still a sense of decorum sufficient to prevent.

Though the particular provisions of this bill do not appear, I think it probable that it went too far in excluding military as well as civil officers.

sovereign (I mean, of course, as to the fundamental principles of our constitution), so has it preserved for the commons their preponderating share in the executive administration, and elevated them in the eyes of foreign nations, till the monarchy itself has fallen comparatively into shade. The pulse of Europe beats according to the tone of our parliament; the counsels of our kings are there revealed, and by that kind of previous sanction which it has been customary to obtain, become, as it were, the resolutions of a senate; and we enjoy the individual pride and dignity which belong to republicans, with the steadiness and tranquillity which the supremacy of a single person has been supposed peculiarly to bestow.

But, if the chief ministers of the crown are indispensably to be present in one or other house of parliament, it by no means follows that the doors should be thrown open to all those subaltern retainers, who, too low to have had any participation in the measures of government, come merely to earn their salaries by a sure and silent vote. Unless some limitation could be put on the number of such officers, they might become the majority of every parliament, especially if its duration were indefinite or very long. It was always the popular endeavour of the opposition, or, as it was usually denominated, the country party, to reduce the number of these dependants; and as constantly the whole strength of the court was exerted to keep them up. William, in truth, from his own errors, and from the disadvantage of the times, would not venture to confide in an unbiassed parliament. On the formation, however, of a new board of revenue, in 1694, for managing the stamp-duties, its members were incapacitated from sitting in the house of commons. (4 & 5 W. & M. c. 21.) This, I believe, is the first instance of exclusion on account of employment; and a similar act was obtained in 1699, extending this disability to the commissioners and some other officers of excise. (11 & 12 W. III. c. 2. § 50.) But when the absolute exclusion of all civil and military officers by the act of settlement was found, on cool reflection, too impracticable to be maintained, and a revision of that article took place in the year 1706, the house of commons were still determined to preserve at least the principle of limitation, as to the number of placemen within their walls. They gave way indeed to the other house in a considerable degree, receding, with some unwillingness, from a clause specifying expressly the description of offices which should not create a disqualification, and consenting to an entire repeal of the original article.[1] But they established two provisions of great importance, which still continue the great securities against an overwhelming influence: first, that every member of the

[1] The house of commons introduced into the act of security, as it was called, a long clause, carried on a division by 167 to 160, Jan. 24. 1706, enumerating various persons who should be eligible to parliament; the principal officers of state, the commissioners of treasury and admiralty, and a limited number of other placemen. The lords thought fit to repeal the whole prohibitory enactment. It was resolved in the commons, by a majority of 205 to 183, that they would not agree to this amendment. A conference accordingly took place, when the managers of the commons objected, Feb. 7., that a total repeal of that provision would admit such an unlimited number of officers to sit in their house, as might destroy the free and impartial proceedings in parliament, and endanger the liberties of the commons of England. Those on the lords' side gave their reasons to the contrary at great length, Feb. 11. The commons determined, Feb. 18., to insert the provision vacating the seat of a member accepting office; and resolved not to insist on their disagreements as to the main clause. Three protests were entered

house of commons accepting an office under the crown, except a higher commission in the army, shall vacate his seat, and a new writ shall issue; secondly, that no person holding an office created since the 25th of October, 1705, shall be capable of being elected or re-elected at all. They excluded at the same time all such as held pensions during the pleasure of the crown; and, to check the multiplication of placemen, enacted, that no greater number of commissioners should be appointed to execute any office than had been employed in its execution at some time before that parliament. (4 Anne, c. 8. 6 Anne, c. 7.) These restrictions ought to be rigorously and jealously maintained, and to receive a construction, in doubtful cases, according to their constitutional spirit; not as if they were of a penal nature towards individuals, an absurdity in which the careless and indulgent temper of modern times might sometimes acquiesce.

It had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretence, who showed any disposition to thwart government in political prosecutions. The general behaviour of the bench had covered it with infamy. Though the real security for an honest court of justice must be found in their responsibility to parliament and to public opinion, it was evident that their tenure in office must, in the first place, cease to be precarious, and their integrity rescued from the severe trial of forfeiting the emoluments upon which they subsisted. In the debates previous to the declaration of rights, we find that several speakers insisted on making the judges' commissions *quamdiu se bene gesserint*, that is, during life or good behaviour, instead of *durante placito*, at the discretion of the crown. The former, indeed, is said to have been the ancient course till the reign of James I. But this was omitted in the hasty and imperfect bill of rights. The commissions however of William's judges ran *quamdiu se bene gesserint*. But the king gave an unfortunate instance of his very injudicious tenacity of bad prerogatives, in refusing his assent, in 1692, to a bill that had passed both houses, for establishing this independence of the judges by law and confirming their salaries.[1] We owe this important provision to the act of settlement; not as ignorance and adulation have perpetually asserted, to his late majesty George III. No judge can be dismissed from office, except in consequence of a conviction for some offence, or the address of both houses of parliament, which is tantamount to an act of the legislature.[2] It is always to be kept in mind that they are still accessible to the hope of further promotion, to the zeal of political attachment, to the flattery of princes and ministers; that the bias of their prejudices, as elderly and peaceable men, will, in a plurality of cases, be on the side of power; that they have very frequently been trained, as advocates, to vindicate every proceeding of the crown; from all which we should look on them

in the house of lords against inserting the word "repealed" in preference to the prohibitory clause, instead of "regulated and altered," all by tory peers. It is observable that as the provision was not to take effect till the house of Hanover should succeed to the throne, the sticklers for it might be full as much influenced by their ill-will to that family as by their zeal for liberty.

[1] Burnet, 86.. It was represented to the king, he says, by some of the judges themselves that it was not fit they should be out of all dependence on the court.

[2] It was originally resolved that they should be removable on the address of either house which was changed afterwards to both houses. Coms. Journ. 12 Mar., and 10 May.

with some little vigilance, and not come hastily to a conclusion that, because their commissions cannot be vacated by the crown's authority, they are wholly out of the reach of its influence. I would by no means be misinterpreted, as if the general conduct of our courts of justice since the revolution, and especially in later times, which in most respects have been the best times, were not deserving of that credit it has usually gained; but possibly it may have been more guided and kept straight than some are willing to acknowledge by the spirit of observation and censure which ever modifies and controls our whole government.

The last clause in the act of settlement, that a pardon under the great seal shall not be pleadable in bar of an impeachment, requires no particular notice beyond what has been said on the subject in a former chapter.[1]

In the following session, a new parliament having been assembled, in which the tory faction had less influence than in the last, and Louis XIV. having, in the mean time, acknowledged the son of James as king of England, the natural resentment of this insult and breach of faith was shown in a more decided assertion of revolution principles than had hitherto been made. The pretended king was attainted of high treason; a measure absurd as a law, but politic as a denunciation of perpetual enmity.[2] It was made high treason to correspond with him, or remit money for his service. And a still more vigorous measure was adopted, an oath to be taken, not only by all civil officers, but by all ecclesiastics, members of the universities, and schoolmasters, acknowledging William as lawful and rightful king, and denying any right or title in the pretended prince of Wales. (13 W. III. c. 6.) The tories, and especially lord Nottingham, had earnestly contended, in the beginning of the king's reign, against those words in the act of recognition, which asserted William and Mary to be rightfully and lawfully king and queen. They opposed the association at the time of the assassination-plot, on account of the same epithets, taking a distinction which satisfied the narrow understanding of Nottingham, and served as a subterfuge for more cunning men, between a king whom they were bound in all cases to obey and one whom they could style rightful and lawful. These expressions were in fact slightly modified on that occasion; yet fifteen peers and ninety-two commoners declined, at least for a time, to sign it. The present oath of abjuration therefore was a signal victory of the whigs who boasted of the revolution over the tories who excused it.[3] The renunciation of the hereditary right, for at this time few of the latter party believed in the young man's

[1] It was proposed in the lords, as a clause in the bill of rights, that pardons upon an impeachment should be void, but lost by 50 to 17; on which twelve peers, all whigs, entered a protest. Parl. Hist. 482.

[2] 13 W. III. c. 3. The lords introduced an amendment into this bill, to attaint also Mary of Este, the late queen of James II. But the commons disagreed on the ground that it might be of dangerous consequence to attaint any one by an amendment, in which case such due consideration cannot be had, as the nature of an attainder requires. The lords, after a conference, gave way; but brought in a separate bill to attaint Mary of Este, which passed with a protest of the tory peers. Lords' Journ. Feb. 6. 12. 10. 1701–2.

[3] Sixteen lords, including two bishops, Compton and Sprat protested against the bill containing the abjuration oath. The first reason of their votes was afterwards expunged from the Journals by order of the house. Lords' Journs., 24 Feb., 3 Mar., 1701–2.

spuriousness, was complete and unequivocal. The dominant faction might enjoy perhaps a charitable pleasure in exposing many of their adversaries, and especially the high-church clergy, to the disgrace and remorse of perjury. Few or none however who had taken the oath of allegiance refused this additional cup of bitterness, though so much less defensible, according to the principles they had employed to vindicate their compliance in the former instance; so true it is that, in matters of conscience, the first scruple is the only one which it costs much to overcome. But the imposition of this test, as was evident in a few years, did not check the boldness, or diminish the numbers, of the Jacobites; and I must confess, that of all sophistry that weakens moral obligation, that is the most pardonable, which men employ to escape from this species of tyranny. The state may reasonably make an entire and heartfelt attachment to its authority the condition of civil trust; but nothing more than a promise of peaceable obedience can justly be exacted from those who ask only to obey in peace. There was a bad spirit abroad in the church, ambitious, factious, intolerant, calumnious; but this was not necessarily partaken by all its members, and many excellent men might deem themselves hardly dealt with in requiring their denial of an abstract proposition, which did not appear so totally false according to their notions of the English constitution and the church's doctrine.[1]

CHAPTER XVI.

ON THE STATE OF THE CONSTITUTION IN THE REIGNS OF ANNE, GEORGE I., AND GEORGE II.

Termination of Contest between the Crown and Parliament—Distinctive Principles of Whigs and Tories—Changes effected in these by Circumstances—Impeachment of Sacheverell displays them again—Revolutions in the Ministry under Anne—War of the Succession—Treaty of Peace broken off—Renewed again by the Tory Government—Arguments for and against the Treaty of Utrecht—The Negotiation mismanaged—Intrigues of the Jacobites—Some of the Ministers engage in them—Just Alarm for the Hanover Succession—Accession of George I.—Whigs come into Power—Great Disaffection in the Kingdom—Impeachment of Tory Ministers—Bill for Septennial Parliaments—Peerage Bill—Jacobitism among the Clergy—Convocation—Its Encroachments—Hoadley—Convocation no longer suffered to sit—Infringements of the Toleration by Statutes under Anne—They are repealed by the Whigs—Principles of Toleration fully established—Banishment of Atterbury—Decline of the Jacobites—Prejudices against the reigning Family—Jealousy of the Crown—Changes in the Constitution whereon it was founded—Permanent

[1] Whiston mentions, that Mr. Baker, of St. John's, Cambridge, a worthy and learned man, as well as others of the college, had thoughts of taking the oath of allegiance on the death of king James; but the oath of abjuration coming out the next year had such expressions as he still scrupled. Whiston's Memoirs. Biog. Brit. (Kippis's edition), art. Baker.

Military Force—Apprehensions from it—Establishment of Militia—Influence over Parliament by Places and Pensions—Attempts to restrain it—Place Bill of 1743—*Secret Corruption—Commitments for Breach of Privilege—of Members for Offences—of Strangers for Offences against Members—or for Offences against the House—Kentish Petition of* 1701—*Dispute with Lords about Aylesbury Election—Proceedings against Mr. Murray in* 1751—*Commitments for Offences unconnected with the House—Privileges of the House not controllable by Courts of Law—Danger of stretching this too far—Extension of Penal Laws—Diminution of personal Authority of the Crown—Causes of this—Party Connexions—Influence of political Writings—Publication of Debates—Increased Influence of the middle Ranks.*—pp. 739–805.

THE act of settlement was the seal of our constitutional laws, the complement of the revolution itself and the bill of rights, the last great statute which restrains the power of the crown, and manifests in any conspicuous degree, a jealousy of parliament in behalf of its own and the subject's privileges. The battle had been fought and gained; the statute-book, as it becomes more voluminous, is less interesting in the history of our constitution; the voice of petition, complaint, or remonstrance is seldom to be traced in the journals; the crown in return desists altogether, not merely from the threatening or objurgatory tone of the Stuarts, but from that dissatisfaction sometimes apparent in the language of William; and the vessel seems riding in smooth water, moved by other impulses, and liable perhaps to other dangers, than those of the ocean-wave and the tempest. The reigns, accordingly, of Anne, George I. and George II., afford rather materials for dissertation, than consecutive facts for such a work as the present; and may be sketched in a single chapter, though by no means the least important, which the reader's study and reflection must enable him to fill up. Changes of an essential nature were in operation during the sixty years of these three reigns, as well as in that beyond the limits of this undertaking, which in length measures them all; some of them greatly enhancing the authority of the crown, or rather of the executive government, while others had so opposite a tendency, that philosophical speculators have not been uniform in determining on which side was the sway of the balance.

No clear understanding can be acquired of the political history of England without distinguishing, with some accuracy of definition, the two great parties of whig and tory. But this is not easy; because those denominations being sometimes applied to factions in the state, intent on their own aggrandizement, sometimes to the principles they entertained or professed, have become equivocal, and do by no means, at all periods and on all occasions, present the same sense; an ambiguity which has been increased by the lax and incorrect use of familiar language. We may consider the words, in the first instance, as expressive of a political theory or principle, applicable to the English government. They were originally employed at the time of the bill of exclusion, though the distinction of the parties they denote is evidently at least as old as the long parliament. Both of these parties, it is

material to observe, agreed in the maintenance of the constitution; that is, in the administration of government by an hereditary sovereign, and in the concurrence of that sovereign with the two houses of parliament in legislation, as well as in those other institutions which have been reckoned most ancient and fundamental. A favourer of unlimited monarchy was not a tory, neither was a republican a whig. Lord Clarendon was a tory, Hobbes was not; bishop Hoadley was a whig, Milton was not. But they differed mainly in this; that to a tory the constitution, inasmuch as it was the constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. Within those bounds which he, as well as his antagonist, meant not to transgress, and rejecting all unnecessary innovation, the whig had a natural tendency to political improvement, the tory an aversion to it. The one loved to descant on liberty and the rights of mankind, the other on the mischiefs of sedition and the rights of kings. Though both, as I have said, admitted a common principle, the maintenance of the constitution, yet this made the privileges of the subject, that the crown's prerogative his peculiar care. Hence it seemed likely that, through passion and circumstance, the tory might aid in establishing despotism, or the whig in subverting monarchy. The former was generally hostile to the liberty of the press, and to freedom of inquiry, especially in religion; the latter their friend. The principle of the one, in short, was amelioration; of the other, conservation.

But the distinctive characters of whig and tory were less plainly seen, after the revolution and act of settlement, in relation to the crown, than to some other parts of our polity. The tory was ardently, and in the first place, the supporter of the church in as much pre-eminence and power as he could give it. For the church's sake, when both seemed as it were on one plank, he sacrificed his loyalty; for her he was always ready to persecute the catholic, and if the times permitted not to persecute, yet to restrain and discountenance, the non-conformist. He came unwillingly into the toleration, which the whig held up as one of the great trophies of the revolution. The whig spurned at the haughty language of the church, and treated the dissenters with moderation, or perhaps with favour. This distinction subsisted long after the two parties had shifted their ground as to civil liberty and royal power. Again, a predilection for the territorial aristocracy, and for a government chiefly conducted by their influence, a jealousy of new men, of the mercantile interest, of the commonalty, never failed to mark the genuine tory. It has been common to speak of the whigs as an aristocratical faction. Doubtless the majority of the peerage from the revolution downwards were of that denomination. But this is merely an instance wherein the party and the principle are to be distinguished. The natural bias of the aristocracy is towards the crown; but, except in most parts of the reign of Anne, the crown might be reckoned with the whig party. No one who reflects on the motives which are likely to influence the judgment of classes in society, would hesitate to predict that an English house of lords would contain

a larger proportion of men inclined to the tory principle than of the opposite school; and we do not find that experience contradicts this anticipation.

It will be obvious that I have given to each of these political principles a moral character; and have considered them as they would subsist in upright and conscientious men, not as we may find them "in the dregs of Romulus," suffocated by selfishness or distorted by faction. The whigs appear to have taken a far more comprehensive view of the nature and ends of civil society; their principle is more virtuous, more flexible to the variations of time and circumstance, more congenial to large and masculine intellects. But it may probably be no small advantage, that the two parties, or rather the sentiments which have been presumed to actuate them, should have been mingled, as we find them, in the complex mass of the English nation, whether the proportions may or not have been always such as we might desire. They bear some analogy to the two forces which retain the planetary bodies in their orbits; the excess of one would disperse them into chaos, that of the other would drag them to a centre. And, though I cannot reckon these old appellations by any means characteristic of our political factions in the nineteenth century, the names whig and tory are often well applied to individuals. Nor can it be otherwise; since they are founded not only on our laws and history, with which most have some acquaintance, but in the diversities of condition and of moral temperament generally subsisting among mankind.

It is however one thing to prefer the whig principle, another to justify, as an advocate, the party which bore that name. So far as they were guided by that principle, I hold them far more friendly to the great interests of the commonwealth than their adversaries. But, in truth, the peculiar circumstances of these four reigns after the revolution, the spirit of faction, prejudice, and animosity, above all, the desire of obtaining or retaining power, which, if it be ever sought as a means, is soon converted into an end, threw both parties very often into a false position, and gave to each the language and sentiments of the other; so that the two principles are rather to be traced in writings, and those not wholly of a temporary nature, than in the debates of parliament. In the reigns of William and Anne, the whigs, speaking of them generally as a great party, had preserved their original character unimpaired far more than their opponents. All that had passed in the former reign served to humble the tories, and to enfeeble their principle. The revolution itself, and the votes upon which it was founded, the bill of recognition in 1690, the repeal of the non-resisting test, the act of settlement, the oath of abjuration, were solemn adjudications, as it were, against their creed. They took away the old argument, that the letter of the law was on their side. If this indeed were all usurpation, the answer was ready; but those who did not care to make it, or by their submission put it out of their power, were compelled to sacrifice not a little of that which had entered into the definition of a tory. Yet even this had not a greater effect than that systematic jealousy and dislike of the administration, which made them encroach, according to ancient notions, and certainly their own, on the prerogative of William. They learned in this no unpleasing lesson to popular assemblies, to

magnify their own privileges and the rights of the people. This tone was often assumed by the friends of the exiled family, and in them it was without any dereliction of their object. It was natural that a jacobite should use popular topics in order to thwart and subvert an usurping government. His faith was to the crown, but to the crown on a right head. In a tory who voluntarily submitted to the reigning prince, such an opposition to the prerogative was repugnant to the maxims of his creed, and placed him, as I have said, in a false position. This is of course applicable to the reigns of George I. and II., and in a greater degree in proportion as the tory and jacobite were more separated than they had been perhaps under William.

The tories gave a striking proof how far they might be brought to abandon their theories, in supporting an address to the queen that she would invite the princess Sophia to take up her residence in England; a measure so unnatural as well as imprudent that some have ascribed it to a subtlety of politics which I do not comprehend. But we need not, perhaps, look farther than to the blind rage of a party just discarded, who, out of pique towards their sovereign, made her more irreconcilably their enemy, and while they hoped to brand their opponents with inconsistency, forgot that the imputation would redound with tenfold force on themselves. The whigs justly resisted a proposal so little called for at that time; but it led to an act for the security of the succession, designating a regency in the event of the queen's decease, and providing that the actual parliament, or the last, if none were in being, should meet immediately, and continue for six months, unless dissolved by the successor.[1]

In the conduct of this party, generally speaking, we do not, I think, find any abandonment of the cause of liberty. The whigs appear to have been zealous for bills excluding placemen from the house, or limiting their numbers in it; and the abolition of the Scots privy council, an odious and despotic tribunal, was owing in a great measure to the authority of lord Somers.[2] In these measures however the tories generally co-operated; and it is certainly difficult in the history of any nation, to separate the influence of sincere patriotism from that of animosity and thirst of power. But one memorable event in the reign of Anne gave an opportunity for bringing the two theories of government into collision, to the signal advantage of that which the whigs professed; I mean the impeachment of Dr. Sacheverell. Though, with a view to the interests of their ministry, this prosecution was very unadvised, and has been deservedly censured, it was of high importance in a constitutional light, and is not only the most authentic exposition,

[1] Anne, c. 8. Parliamentary History 457. et post. Burnet 429.

[2] 6 Anne, c. 6. Parl. Hist. 613. Somerville, 296. Hardw. Papers, p. ii. 473. Cunningham attests the zeal of the whigs for abolishing the Scotch privy council, though he is wrong in reckoning Lord Cowper among them, whose name appears in the protest on the other side, ii. 135. &c. The distinction of old and modern whigs appeared again in this reign; the former professing, and in general feeling, a more steady attachment to the principles of civil liberty. Sir Peter King, sir Joseph Jekyll, Mr. Wortley, Mr. Hampden, and the historian himself, were ofthis description; and conseque ntly did not always support Godolphin. P. 210. &c. Mr. Wortley brought in a bill, which passed the commons in 1710, for voting by ballot. It was opposed by Wharton and Godolphin in the lords, as dangerous to the constitution, and thrown out. Wortley, he says, went the next year to Venice, on purpose to inquire into the effects of the ballot, which prevailed universally in that republic. P. 285.

but the most authoritative ratification, of the principles upon which the revolution is to be defended.[1]

The charge against Sacheverell was, not for impugning what was done at the revolution, which he affected to vindicate, but for maintaining that it was not a case of resistance to the supreme power, and consequently no exception to his tenet of an unlimited passive obedience. The managers of the impeachment had, therefore, not only to prove that there was resistance in the revolution, which could not of course be sincerely disputed, but to assert the lawfulness, in great emergencies, or what is called in politics necessity, of taking arms against the law—a delicate matter to treat of at any time, and not least so by ministers of state and law officers of the crown, in the very presence, as they knew, of their sovereign.[2] We cannot praise too highly their speeches upon this charge; some shades, rather of discretion than discordance, may be perceptible; and we may distinguish the warmth of Lechmere, or the openness of Stanhope, from the caution of Walpole, who betrays more anxiety than his colleagues to give no offence in the highest quarter; but in every one the same fundamental principles of the whig creed, except on which indeed the impeachment could not rest, are unambiguously proclaimed. "Since we must give up our right to the laws and liberties of this kingdom," says sir Joseph Jekyll, "or, which is all one, be precarious in the enjoyment of them, and hold them only during pleasure, if this doctrine of unlimited non-resistance prevails, the commons have been content to undertake this prosecution." (State Trials, xv. 95.) "The doctrine of unlimited unconditional, passive obedience," says Mr. Walpole, "was first invented to support arbitrary and despotic power, and was never promoted or countenanced by any government that had not designs some time or other of making use of it." (Id. 115.) And thus general Stanhope still more vigorously: "As to the doctrine itself of absolute non-resistance, it should seem needless to prove by arguments that it is inconsistent with the law of reason, with the law of nature, and with the practice of all ages and countries. Nor is it very material what the opinions of some particular divines, or even the doctrine generally preached in

[1] Parl. Hist. vi. 805. Burnet, 537. State Trials, xv. 1. It is said in Coxe's Life of Marlborough, iii. 141., that Marlborough and Somers were against this prosecution. This writer goes out of his way to make a false and impertinent remark on the managers of the impeachment, as giving encouragement by their speeches to licentiousness and sedition. Id. 166.

[2] "The managers appointed by the house of commons," says an ardent Jacobite, "behaved with all the insolence imaginable. In their discourse they boldly asserted, even in her majesty's presence, that if the right to the crown was hereditary and indefeasible, the prince beyond seas, meaning the king, and not the queen, had the legal title to it, she having no claim thereto, but what she owed to the people; and that by the revolution principles, on which the constitution was founded and to which the laws of the land agreed, the people might turn out or lay aside their sovereigns as they saw cause. Though, no doubt of it, there was a great deal of truth in these assertions, it is easy to be believed that the queen was not well pleased to hear them maintained, even in her own presence and in so solemn a manner, before such a great concourse of subjects. For though princes do cherish these and the like doctrines, whilst they serve as means to advance themselves to a crown, yet, being once possessed thereof, they have as little satisfaction in them as those who succeed by an hereditary unquestionable title." Lockhart Papers, i. 312.

It is probable enough that the last remark has its weight, and the queen did not wholly like the speeches of some of the managers; and yet nothing can be more certain than that she owed her crown in the first instance, and the preservation of it at that very time, to those insolent doctrines which wounded her royal ear; and that the genuine loyalists would soon have lodged her in the Tower.

some particular reigns, may have been concerning it. It is sufficient for us to know what the practice of the church of England has been, when it found itself oppressed. And indeed one may appeal to the practice of all churches, of all states, and of all nations in the world, how they behaved themselves when they found their civil and religious constitutions invaded and oppressed by tyranny. I believe we may further venture to say, that there is not at this day subsisting any nation or government in the world, whose first original did not receive its foundation either from resistance or compact; and as to our purpose it is equal if the latter be admitted. For wherever compact is admitted, there must be admitted likewise a right to defend the rights accruing by such compact. To argue the municipal laws of a country in this case is idle. Those laws were only made for the common course of things, and can never be understood to have been designed to defeat the end of all laws whatsoever; which would be the consequence of a nation's tamely submitting to a violation of all their divine and human rights." (State Trials, 127.) Mr. Lechmere argues to the same purpose in yet stronger terms. (Id. 61.)

But, if these managers for the commons were explicit in their assertion of the whig principle, the counsel for Sacheverell by no means unfurled the opposite banner with equal courage. In this was chiefly manifested the success of the former. They had recourse to the petty chicane of arguing that he had laid down a general rule of obedience without mentioning its exceptions, that the revolution was a case of necessity, and that they fully approved what was done therein. They set up a distinction, which, though at that time perhaps novel, has sometimes since been adopted by tory writers; that resistance to the supreme power was indeed utterly illegal on any pretence whatever, but that the supreme power in this kingdom was the legislature, not the king; and that the revolution took effect by the concurrence of the lords and commons.[1] This is of itself a descent from the high ground of toryism, and would not have been held by the sincere bigots of that creed. Though specious, however, the argument is a sophism, and does not meet the case of the revolution. For, though the supreme power may be said to reside in the legislature, yet the prerogative within its due limits is just as much part of the constitution, and the question of resistance to lawful authority remains as before. Even if this resistance had been made by the two houses of parliament, it was but the case of the civil war, which had been explicitly condemned by more than one statute of Charles II. But, as Mr. Lechmere said in reply, it was undeniable that the lords and commons did not join in that resistance at the revolution as part of the legislative and supreme

[1] State Trials, 196. 229. It is observed by Cunningham, p. 286., that Sacheverell's counsel, except Phipps, were ashamed of him; which is really not far from the case. Mr. serjeant Pratt, he says, refused a good fee to plead for him; "a rare example of honesty among lawyers." Id. 290. "The doctor," says Lockhart, "employed sir Simon, afterwards lord Harcourt, and sir Constantine Phipps, as his counsel, who defended him the best way they could, though they were hard put to maintain the hereditary right and unlimited doctrine of non-resistance, and not condemn the revolution. And the truth on it is, these are so inconsistent with one another, that the chief arguments alleged in this and other parallel cases came to no more than this; that the revolution was an exception from the nature of government in general, and the constitution and laws of Britain in particular, which necessity, in that particular case made expedient and lawful." Ibid.

power, but as part of the collective body of the nation. (State Trials, 407.) And sir John Holland had before observed, "that there was a resistance at the revolution was most plain, if taking up arms in Yorkshire, Nottinghamshire, Cheshire, and almost all the counties of England; if the desertion of a prince's own troops to an invading prince, and turning their arms against their sovereign, be resistance." (Id. 110.) It might in fact have been asked whether the dukes of Leeds and Shrewsbury, then sitting in judgment on Sacheverell (and who afterwards voted him not guilty), might not have been convicted of treason, if the prince of Orange had failed of success?[1] The advocates indeed of the prisoner made so many concessions as amounted to an abandonment of all the general question. They relied chiefly on numerous passages in the homilies, and most approved writers of the Anglican church, asserting the duty of unbounded passive obedience. But the managers eluded these in their reply with decent respect.[2] The lords voted Sacheverell guilty by a majority of 67 to 59; several voting on each side rather according to their present faction than their own principles. They passed a slight sentence, interdicting him only from preaching for three years. This was deemed a sort of triumph by his adherents; but a severe punishment on a wretch so insignificant would have been misplaced; and the sentence may be compared to the nominal damages sometimes given in a suit instituted for the trial of a great right.

The shifting combinations of party in the reign of Anne, which affected the original distinctions of whig and tory, though generally known, must be shortly noticed. The queen, whose understanding and fitness for government were below mediocrity, had been attached to the tories, and bore an antipathy to her predecessor. Her first ministry, her first parliament, gave presage of a government to be wholly conducted by that party. But this prejudice was counteracted by the persuasions of that celebrated favourite, the wife of Marlborough, who, probably from some personal resentments, had thrown her influence into the scale of the whigs. The well-known records of their conversation and correspondence present a strange picture of good-natured feebleness on one side, and of ungrateful insolence on the other. But the interior of a court will rarely endure daylight. Though Godolphin and Marlborough, in whom the queen reposed her entire confidence,

[1] Cunningham says that the duke of Leeds spoke strongly in favour of the revolution though he voted Sacheverell not guilty. P. 298. Lockhart observes, that he added success to necessity, as an essential point for rendering the revolution lawful.

[2] The homilies are so much more vehement against resistance than Sacheverell was, that it would have been awkward to pass a rigorous sentence on him. In fact, he or any other clergyman had a right to preach the homily against rebellion instead of a sermon. As to their laying down general rules without adverting to the exceptions, an apology which the managers set up for themselves, and it was just as good for Sacheverell; and the homilies expressly deny all possible exceptions. Tillotson had a plan of dropping these old compositions, which in some doctrinal points, as well as in the tenet of non-resistance, do not represent the sentiments of the modern church, though, in a general way, it subscribes to them. But the times were not ripe for this, or some other of that good prelate's designs. Wordsworth's Eccles. Biog. vol. vi. The quotations from the homilies and other approved works by Sacheverell's counsel are irresistible, and must have increased the party spirit of the clergy. "No conjuncture of circumstances whatever," says bishop Sanderson, "can make that expedient to be done at any time that is of itself, and in the kind, unlawful. For a man to take up arms offensive or defensive against a lawful sovereign, being a thing in its nature simply and de toto genere unlawful, may not be done by any man, at any time, in any case, upon any colour, or pretence whatsoever." State Trials, 231.

had been thought tories, they became gradually alienated from that party, and communicated their own feelings to the queen. The house of commons very reasonably declined to make an hereditary grant to the latter out of the revenues of the post-office in 1702, when he had performed no extraordinary services; though they acceded to it without hesitation after the battle of Blenheim.[1] This gave some offence to Anne; and the chief tory leaders in the cabinet, Rochester, Nottingham, and Buckingham, displaying a reluctance to carry on the war with such vigour as Marlborough knew to be necessary, were soon removed from office. Their revengeful attack on the queen, in the address to invite the princess Sophia, made a return to power hopeless for several years. Anne however entertained a desire very natural to an English sovereign, yet in which none but a weak one will expect to succeed, of excluding chiefs of parties from her councils. Disgusted with the tories, she was loth to admit the whigs; and thus Godolphin's administration, from 1704 to 1708, was rather sullenly supported, sometimes indeed thwarted, by that party. Cowper was made chancellor against the queen's wishes;[2] but the junto, as it was called, of five eminent whig peers, Somers, Halifax, Wharton, Orford, and Sunderland, were kept out through the queen's dislike, and in some measure, no question, through Godolphin's jealousy. They forced themselves into the cabinet about 1708; and effected the dismissal of Harley and St. John, who, though not of the regular tory school in connexion or principle, had already gone along with that faction in the late reign, and were now reduced by their dismissal to unite with it.[3] The whig ministry of queen Anne, so often talked of, cannot in fact be said to have existed more than two years, from 1708 to 1710; her previous administration having been at first tory, and afterwards of a motley complexion, though depending for existence on the great whig interest which it in some degree proscribed. Every one knows that this ministry was precipitated from power through the favourite's abuse of her ascendancy, become at length intolerable to the most forbearing of queens and mistresses, conspiring with another intrigue of the bedchamber, and the popular clamour against Sacheverell's impeachment. It seems rather an humiliating proof of the sway which the feeblest prince enjoys even in a limited monarchy, that the fortunes of Europe should have been changed by nothing more noble than the insolence of one waiting-woman and the cunning of another. It is true that this was effected by throwing the weight of the crown into the scale of a powerful faction; yet the house of Bourbon would probably not have reigned beyond the Pyrenees, but for Sarah and Abigail at queen Anne's toilet.

[1] Parl. Hist. vi. 57. They did not scruple, however, to say what cost nothing but veracity and gratitude, that Marlborough had retrieved the honour of the nation. This was justly objected to, as reflecting on the late king, but carried by 180 to 80. Id. 58. Burnet.

[2] Coxe's Marlborough, i. 483. Mr. Smith was chosen speaker by 248 to 205, a slender majority; but some of the ministerial party seem to have thought him too much a whig. Id. 485. Parl. Hist. 450. The whig newspapers were long hostile to Marlborough.

[3] Burnet rather gently slides over these jealousies between Godolphin and the whig junto; and Tindal, his mere copyist, is not worth mentioning. But Cunningham's history, and still more the letters published in Coxe's Life of Marlborough, show better the state of party intrigues; which the Parliamentary History also illustrates, as well as many pamphlets of the time. Somerville has carefully compiled as much as was known when he wrote.

The object of the war, as it is commonly called, of the Grand Alliance, commenced in 1702, was, as expressed in an address of the h use of commons, for preserving the liberties of Europe and reducing the exorbitant power of France. (Parl. Hist. vi. 4.) The occupation of the Spanish dominions by the duke of Anjou, on the authority of the late king's will, was assigned as its justification, together with th. acknowledgment of the pretended prince of Wales as successor to his father James. Charles, archduke of Austria, was recognised as king of Spain; and as early as 1705 the restoration of that monarchy to his house is declared in a speech from the throne to be not only safe and advantageous, but glorious to England. (Nov. 27. Parl. Hist. 477.) Louis XIV. had perhaps at no time much hope of retaining for his grandson the whole inheritance he claimed; and on several occasions made overtures for negotiation, but such as indicated his design of rather sacrificing the detached possessions of Italy and the Netherlands than Spain itself and the Indies.[1] After the battle of Oudenarde, however, and the loss of Lille in the campaign of 1708, the exhausted state of France and discouragement of his court induced him to acquiesce in the cession of the Spanish monarchy as a basis of treaty. In the conferences of the Hague in 1709, he struggled for a time to preserve Naples and Sicily; but ultimately admitted the terms imposed by the allies, with the exception of the famous thirty-seventh article of the preliminaries, binding him to procure by force or persuasion the resignation of the Spanish crown by his grandson within two months. This proposition he declared to be both dishonourable and impracticable; and, the allies refusing to give way, the negotiation was broken off. It was renewed the next year at Gertruydenburg; but the same obstacle still proved insurmountable.[2]

It has been the prevailing opinion in modern times that the English ministry, rather against the judgment of their allies of Holland, insisted upon a condition not indispensable to their security, and too ignominious for their fallen enemy to accept. Some may perhaps incline to think that, even had Philip of Anjou been suffered to reign in Naples, a possession rather honourable than important, the balance of power would not have been seriously affected, and the probability of durable peace been increased. This, however, it was not necessary to discuss. The main question is as to the power which the allies possessed of securing the Spanish monarchy for the archduke, if they had consented to waive the thirty-seventh article of the preliminaries. If indeed they could have been considered as a single potentate, it was doubtless possible, by means of keeping up great armies on the frontier, and by the delivery of cautionary towns, to have prevented the king of France from lending assistance to his grandson. But, self-interested and disunited as confederacies generally are, and as the grand alliance had long since become, this appeared a very dangerous course of policy, if Louis should be playing an underhand game against his engagements. And this it was not then unreasonable to suspect, even if we should believe, in despite of some plausible authorities, that he was really

[1] Coxe's Marlborough, i. 453. ii. 110. Cunningham, ii. 52. 83.
[2] Mémoires de Torcy, vol. ii. passim. Coxe's Marlborough, vol. iii. Bolingbroke's Letters on History, and lord Walpole's Answer to them. Cunningham. Somerville, 340.

sincere in abandoning so favourite an interest. The obstinate adherence of Godolphin and Somers to the preliminaries may possibly have been erroneous; but it by no means deserves the reproach that has been unfairly bestowed on it; nor can the whigs be justly charged with protracting the war to enrich the duke of Marlborough, or to secure themselves in power.[1]

The conferences at Gertruydenburg were broken off in July, 1710, because an absolute security for the evacuation of Spain by Philip appeared to be wanting; and within six months a fresh negotiation was secretly on foot, the basis of which was his retention of that kingdom. For the administration presided over by Godolphin had fallen meanwhile; new counsellors, a new parliament, new principles of government. The tories had from the beginning come very reluctantly into the schemes of the grand alliance; though no opposition to the war had ever been shown in parliament, it was very soon perceived that the majority of that denomination had their hearts bent on peace.[2] But instead of renewing the negotiation in concert with the allies (which indeed might have been impracticable), the new ministers fell upon the course of a clandestine arrangement, in exclusion of all the other powers, which led to the signature of preliminaries in September, 1711, and afterwards to the public congress of Utrecht, and the celebrated treaty named from that town. Its chief provisions are too well known to be repeated.

The arguments in favour of a treaty of pacification, which should abandon the great point of contest, and leave Philip in possession of Spain and America, were neither few nor inconsiderable. 1. The

[1] The late biographer of Marlborough asserts that he was against breaking off the conferences in 1709, though clearly for insisting on the cession of Spain. (iii. 40.) Godolphin, Somers, and the whigs in general, expected Louis XIV. to yield the thirty-seventh article. Cowper, however was always doubtful of this. Id. 176.

It is very hard to pronounce, as it appears to me, on the great problem of Louis's sincerity in this negotiation. No decisive evidence seems to have been brought on the contrary side. The most remarkable authority that way is a passage in the Mémoires of St. Phelipe, iii. 263., who certainly asserts that the king of France had, without the knowledge of any of his ministers, assured his grandson of a continued support. But the question returns as to St. Phelipe's means of knowing so important a secret. On the other hand, I cannot discover in the long correspondence between madame de Maintenon and the princesse des Ursins the least corroboration of these suspicions, but much to the contrary effect. Nor does Torcy drop a word, though writing when all was over, by which we should infer that the court of Versailles had any other hopes left in 1709, than what still lingered in their heart from the determined spirit of the Castilians themselves.

It appears by the Mémoires de Noailles, iii. 10, (edit. 1777,) that Louis wrote to Philip, 26 Nov. 1708, hinting that he must reluctantly give him up, in answer to one wherein the latter had declared that he would not quit Spain while he had a drop of blood in his veins. And on the French ambassador at Madrid, Amelot, remonstrating against the abandonment of Spain, with an evident intimation that Philip could not support himself alone, the king of France answered that he must end the war at any price. 15 April, 1709. Id. 34. In the next year, after the battle of Saragosa, which seemed to turn the scale wholly against Philip, Noailles was sent to Madrid in order to persuade that prince to abandon the contest. Id. 107. There were some in France who would even have accepted the thirty-seventh article, of whom madame de Maintenon seems to have been. P. 117. We may perhaps think that an explicit offer of Naples, on the part of the allies, would have changed the scene; nay, it seems as if Louis would have been content at this time with Sardinia and Sicily. P. 108.

[2] A contemporary historian of remarkable gravity observes: "It was strange to see how much the desire of French wine, and the dearness of it, alienated many men from the duke of Marlborough's friendship." Cunningham, ii. 220. The hard drinkers complained that they were poisoned by port; these formed almost a party: Dr. Aldrich, dean of Christchurch, surnamed the priest of Bacchus, Dr. Ratcliffe, general Churchill, &c. "And all the bottle companions, many physicians, and great numbers of the lawyers and inferior clergy, and, in fine, the loose women too, were united together in the faction against the duke of Marlborough."

kingdom had been impoverished by twenty years of uninterruptedly augmented taxation; the annual burthens being triple in amount of those paid before the revolution. Yet, amidst these sacrifices, we had the mortification of finding a debt rapidly increasing, whereof the mere interest far exceeded the ancient revenues of the crown, to be bequeathed, like an hereditary curse, to unborn ages. Though the supplies had been raised with less difficulty than in the late reign, and the condition of trade was less unsatisfactory, the landed proprietors saw with indignation the silent transfer of their wealth to new men, and hated the glory that was bought by their own degradation. Was it not to be feared that they might hate also the revolution, and the protestant succession that depended on it, when they tasted these fruits it had borne? Even the army had been recruited by violent means unknown to our constitution, yet such as the continual loss of men, with a population at the best stationary, had perhaps rendered necessary.[1]

2. The prospect of reducing Spain to the archduke's obedience was grown unfavourable. It was at best an odious work, and not very defensible on any maxims of national justice, to impose a sovereign on a great people in despite of their own repugnance, and what they deemed their royal obligation. Heaven itself might shield their righteous cause, and baffle the selfish rapacity of human politics. But what was the state of the war at the close of 1710? The surrender of 7000 English under Stanhope at Brihuega had ruined the affairs of Charles, which in fact had at no time been truly prosperous, and confined him to the single province sincerely attached to him, Catalonia. As it was certain that Philip had spirit enough to continue the war, even if abandoned by his grandfather, and would have the support of almost the entire nation, what remained but to carry on a very doubtful contest for the subjugation of that extensive kingdom? In Flanders, no doubt, the genius of Marlborough kept still the ascendant; yet France had her Fabius in Marshall Villars; and the capture of three or four small fortresses in a whole campaign did not presage a rapid destruction of the enemy's power.

3. It was acknowledged that the near connexion of the monarchs on the thrones of France and Spain could not be desired for Europe. Yet the experience of ages had shown how little such ties of blood determined the policy of courts; a Bourbon on the throne of Spain could not but assert the honour, and even imbibe the prejudices, of his subjects; and as the two nations were in all things opposite, and must clash in their public interests, there was little reason to fear a subserviency in the cabinet of Madrid, which, even in that absolute monarchy, could not be displayed against the general sentiment.

4. The death of the emperor Joseph, and election of the archduke Charles in his room, which took place in the spring of 1711, changed

[1] A bill was attempted in 1704 to recruit the army by a forced conscription of men from each parish, but laid aside as unconstitutional. Boyer's Reign of Queen Anne, p. 123. It was tried again in 1707 with like success. P. 319. But it was resolved instead to bring in a bill for raising a sufficient number of troops out of such persons as have no lawful calling or employment. Stat. 4 Anne, c. 10. Parl. Hist. 335. The parish officers were thus enabled to press men for the land service; a method hardly more unconstitutional than the former, and liable to enormous abuses. The act was temporary, but renewed several times during the war. It was afterwards revived in 1757 (30 Geo. II. c. 8), but never, I believe, on any later occasion.

in no small degree the circumstances of Europe. It was now a struggle to unite the Spanish and Austrian monarchies under one head. Even if England might have little interest to prevent this, could it be indifferent to the smaller states of Europe that a family not less ambitious and encroaching than that of Bourbon should be so enormously aggrandized? France had long been to us the only source of apprehension; but to some states, to Savoy, to Switzerland, to Venice, to the principalities of the empire, she might justly appear a very necessary bulwark against the aggressions of Austria. The Alliance could not be expected to continue faithful and unanimous, after so important an alteration in the balance of power.

5. The advocates of peace and adherents of the new ministry stimulated the national passions of England by vehement reproaches of the allies. They had thrown, it was contended, in despite of all treaties, an unreasonable proportion of expense upon a country not directly concerned in their quarrel, and rendered a negligent or criminal administration their dupes or accomplices. We were exhausting our blood and treasure to gain kingdoms for the house of Austria which insulted, and the best towns of Flanders for the States-General who cheated us. The barrier treaty of lord Townshend was so extravagant, that one might wonder at the presumption of Holland in suggesting its articles, much more at the folly of our government in acceding to them. It laid the foundation of endless dissatisfaction on the side of Austria, thus reduced to act as the vassal of a little republic in her own territories, and to keep up fortresses at her own expense, which others were to occupy. It might be anticipated that, at some time, a sovereign of that house would be found more sensible to ignominy than to danger, who would remove this badge of humiliation by dismantling the fortifications which were thus to be defended. Whatever exaggeration might be in these clamours, they were sure to pass for undeniable truths with a people jealous of foreigners, and prone to believe itself imposed upon, from a consciousness of general ignorance and credulity.

These arguments were met by answers not less confident, though less successful at the moment, than they have been deemed convincing by the majority of politicians in later ages. It was denied that the resources of the kingdom were so much enfeebled; the supplies were still raised without difficulty; commerce had not declined; public credit stood high under the Godolphin ministry; and it was especially remarkable, that the change of administration, notwithstanding the prospect of peace, was attended by a great fall in the price of stocks. France, on the other hand, was notoriously reduced to the utmost distress; and, though it were absurd to allege the misfortunes of our enemy by way of consolation for our own, yet the more exhausted of the two combatants was naturally that which ought to yield; and it was not for the honour of our free governmen that we should be outdone in magnanimous endurance of privations for the sake of the great interests of ourselves and our posterity by the despotism we so boastfully scorned.[1]

[1] Every contemporary writer bears testimony to the exhaustion of France, rendered still more deplorable by the unfavourable season of 1709, which produced a famine. Madame de Maintenon's letters to the princess des Ursins are full of the public misery, which she did not soften, out of some vain hope that her inflexible correspondent might relent at length, and prevail on the king and queen of Spain to abandon their throne.

The king of France had now for half a century been pursuing a system of encroachment on the neighbouring states, which the weakness of the two branches of the Austrian house, and the perfidiousness of the Stuarts, not less than the valour of his troops and skill of his generals, had long rendered successful. The tide had turned for the first time in the present war; victories more splendid than were recorded in modern warfare had illustrated the English name. Were we spontaneously to relinquish these great advantages, and two years after Louis had himself consented to withdraw his forces from Spain, our own arms having been in the mean time still successful on the most important scene of the contest, to throw up the game in despair, and leave him far more the gainer at the termination of this calamitous war, than he had been after those triumphant campaigns which his vaunting medals commemorate? Spain of herself could not resist the confederates, even if united in support of Philip; which was denied as to the provinces composing the kingdom of Aragon, and certainly as to Catalonia; it was in Flanders that Castile was to be conquered; it was France that we were to overcome; and now that her iron barrier had been broken through, when Marlborough was preparing to pour his troops upon the defenceless plains of Picardy, could we doubt that Louis must in good earnest abandon the cause of his grandson, as he had already pledged himself in the conferences of Gertruydenburg?

2. It was easy to slight the influence which the ties of blood exert over kings. Doubtless they are often torn asunder by ambition or wounded pride. But it does not follow that they have no efficacy; and the practice of courts in cementing alliances by intermarriage seems to show that they are not reckoned indifferent. It might however be admitted that a king of Spain, such as she had been a hundred years before, would probably be led by the tendency of his ambition into a course of policy hostile to France. But that monarchy had long been declining; great rather in name and extent of dominion than intrinsic resources, she might perhaps rally for a short period under an enterprising minister; but with such inveterate abuses of government, and so little progressive energy among the people, she must gradually sink lower in the scale of Europe, till it might become the chief pride of her sovereigns that they were the younger branches of the house of Bourbon. To cherish this connexion would be the policy of the court of Versailles; there would result from it a dependent relation, an habitual subserviency of the weaker power, a family compact of perpetual union, always opposed to Great Britain. In distant ages, and after fresh combinations of the European commonwealth should have seemed almost to efface the recollection of Louis XIV. and the war of the succession, the Bourbons on the French throne might still claim a sort of primogenitary right to protect the dignity of the junior branch by interference with the affairs of Spain; and a late posterity of those who witnessed the peace of Utrecht might be entangled by its improvident concessions.

3. That the accession of Charles to the empire rendered his possession of the Spanish monarchy in some degree less desirable, need not be disputed; though it would not be easy to prove that it could endanger England, or even the smaller states, since it was agreed on

all hands that he was to be master of Milan and Naples. But against this, perhaps imaginary, mischief the opponents of the treaty set the risk of seeing the crowns of France and Spain united on the head of Philip. In the years 1711 and 1712 the dauphin, the duke of Burgundy, and the duke of Berry, were swept away. An infant stood alone between the king of Spain and the French succession. The latter was induced, with some unwillingness, to sign a renunciation of this contingent inheritance. But it was notoriously the doctrine of the French court that such renunciations were invalid; and the sufferings of Europe were chiefly due to this tenet of indefeasible royalty. It was very possible that Spain would never consent to this union, and that a fresh league of the great powers might be formed to prevent it; but, if we had the means of permanently separating the two kingdoms in our hands, it was strange policy to leave this door for a renewal of the old quarrel.

But whatever judgment we may be disposed to form as to the political necessity of leaving Spain and America in the possession of Philip, it is impossible to justify the course of that negotiation which ended in the peace of Utrecht. It was at best a dangerous and inauspicious concession, demanding every compensation that could be devised, and which the circumstances of the war entitled us to require. France was still our formidable enemy; the ambition of Louis was still to be dreaded, his intrigues to be suspected. That an English minister should have thrown himself into the arms of this enemy at the first overture of negotiation; that he should have renounced advantages upon which he might have insisted; that he should have restored Lille, and almost attempted to procure the sacrifice of Tournay; that throughout the whole correspondence and in all personal interviews with Torcy he should have shown the triumphant queen of Great Britain more eager for peace than her vanquished adversary; that the two courts should have been virtually conspiring against those allies, without whom we had bound ourselves to enter on no treaty; that we should have withdrawn our troops in the midst of a campaign, and even seized upon the towns of our confederates while we left them exposed to be overcome by a superior force; that we should have first deceived those confederates by the most direct falsehood in denying our clandestine treaty, and then dictated to them its acceptance, are facts so disgraceful to Bolingbroke, and in somewhat a less degree to Oxford, that they can hardly be palliated by establishing the expediency of the treaty itself.

For several years after the treaty of Ryswick, the intrigues of ambitious and discontented statesmen, and of a misled faction in favour of the exiled family, grew much colder; the old age of James and the infancy of his son being alike incompatible with their success. The Jacobites yielded a sort of provisional allegiance to the daughter of their king, deeming her, as it were, a regent in the heir's minority, and willing to defer the consideration of his claim till he should be competent to make it, or to acquiesce in her continuance upon the throne, if she could be induced to secure his reversion.[1] Meanwhile, under the name

[1] It is evident from Macpherson's Papers, that all hopes of a restoration in the reign of Anne were given up in England. They soon revived however as to Scotland, and grew strongest about the time of the union.

of tories and high-churchmen, they carried on a more dangerous war by sapping the bulwarks of the revolution settlement. The disaffected clergy poured forth sermons and libels, to impugn the principles of the whigs or traduce their characters. Twice a year especially, on the 30th of January and 29th of May, they took care that every stroke upon rebellion and usurpation should tell against the expulsion of the Stuarts and the Hanover succession. They inveighed against the dissenters and the toleration. They set up pretences of loyalty towards the queen, descanting sometimes on her hereditary right, in order to throw a slur on the settlement. They drew a transparent veil over their designs, which might screen them from prosecution, but could not impose, nor was meant to impose, on the reader. Among these the most distinguished was Leslie, author of a periodical sheet called the Rehearsal, printed weekly from 1704 to 1708; and as he, though a non-juror, and unquestionable jacobite, held only the same language as Sacheverell, and others who affected obedience to the government, we cannot much be deceived in assuming that their views were entirely the same.[1]

The court of St. Germains, in the first years of the queen, preserved a secret connexion with Godolphin and Marlborough, though justly distrustful of their sincerity; nor is it by any means clear that they made any strong professions.[2] Their evident determination to reduce the power of France, their approximation towards the whigs, the averseness of the duchess to Jacobite principles, taught at length that unfortunate court how little it had to expect from such ancient friends. The Scots, on the other hand, were eager for the young king's immediate restoration; and their assurances finally produced his unsuccessful expedition to the coast in 1708.[3] This alarmed the queen, who at least had no thoughts of giving up any part of her dominions, and probably exasperated the two ministers. (Burnet, 502.) Though Godolphin's partiality to the Stuart cause was always suspected, the proofs of his intercourse with their emissaries are not so strong as against Marl-

[1] The Rehearsal is not written in such a manner as to gain over many proselytes. The scheme of fighting against liberty with her own arms had not yet come into vogue; or rather Leslie was too mere a bigot to practise it. He is wholly for arbitrary power; but the common stuff of his journal is high-church notions of all descriptions. This could not win many in the reign of Anne.

[2] Macpherson, i. 608. If Carte's anecdotes are true, which is very doubtful, Godolphin, after he was turned out, declared his concern at not having restored the king; that he thought Harley would do it, but by French assistance, which he did not intend; that the tories had always distressed him, and his administration had passed in a struggle with the whig junto. Id. 170. Somerville says, he was assured that Carte was reckoned credulous and ill informed by the Jacobites. P. 273. It seems indeed, by some passages in Macpherson's [illegible] the Stuart agents either kept up an intercourse with Godolphin, or pretended to do so. Vol. ii. 2. et post. But it is evident that they had no confidence in him.

It must be observed, however, that lord Dartmouth, in his notes on Burnet, repeatedly intimates that Godolphin's secret object in his ministry was the restoration of the house of Stuart, and that with this view he suffered the act of security in Scotland to pass, which raised such a clamour that he was forced to close with the whigs in order to save himself. It is said also by a very good authority, lord Hardwicke, (note on Burnet, Oxf. edit. v. 352.) that there was something not easy to be accounted for in the conduct of the ministry preceding the attempt on Scotland in 1708; giving us to understand in the subsequent part of the note that Godolphin was suspected of connivance with it. And this is confirmed by Ker of Kersland, who directly charges the treasurer with extreme remissness, if not something worse. Mem. i. 54. Lockhart's Comment. (in Lockhart Papers, i. 308.) Yet it seems almost impossible to suspect Godolphin of such treachery, not only towards the protestant succession, but his mistress herself.

[3] Macpherson, ii. 74. et post. Hooke's Negotiations. Lockhart's Commentaries. Ker of Kersland's Mem. 45. Burnet. Cunningham. Somerville.

borough; who, so late as 1711, declared himself more positively than he seems hitherto to have done in favour of their restoration.[1] But the extreme selfishness and treachery of his character makes it difficult to believe that he had any further view than to secure himself in the event of a revolution which he judged probable. His interest, which was always his deity, did not lie in that direction; and his great sagacity must have perceived it.

A more promising overture had by this time been made to the young claimant from an opposite quarter. Mr. Harley, about the end of 1710, sent the abbé Gaultier to marshal Berwick (natural son of James II. by Marlborough's sister), with authority to treat about the restoration; Anne of course retaining the crown for her life, and securities being given for the national religion and liberties. The conclusion of peace was a necessary condition. The Jacobites in the English parliament were directed in consequence to fall in with the court, which rendered it decidedly superior. Harley promised to send over in the next year a plan for carrying that design into effect. But neither at that time, nor during the remainder of the queen's life, did this dissembling minister take any further measures, though still in strict connexion with that party at home, and with the court of St. Germains.[2] It was necessary, he said, to proceed gently, to make the army their own, to avoid suspicions which would be fatal. It was manifest that the course of his administration was wholly inconsistent with his professions; the friends of the house of Stuart felt that he betrayed, though he did not delude them; but it was the misfortune of this minister, or rather the just and natural reward of crooked counsels, that those he meant to serve could neither believe in his friendship, nor forgive his appearances of enmity. It is doubtless not easy to pronounce on the real intentions of men so destitute of sincerity as Harley and Marlborough; but in believing the former favourable to the protestant succession, which he had so eminently contributed to establish, we accede to the judgment of those contemporaries who were best able to form one, and especially of the very Jacobites with whom he tampered. And this is so powerfully confirmed by most of his public measures, his averseness to the high tories, and their consequent hatred of him, his irreconcilable disagreement with those of his colleagues who looked most to St. Germains, his frequent attempts to renew a connexion with the whigs, his contempt of the Jacobite creed of government, and the little prospect he could have had of retaining power on such a revolution, that, so far at least as may be presumed from what has hitherto become public, there seems no reason for counting the earl of Oxford among those from whom the house of Hanover had any treachery to apprehend.[3]

[1] Macpherson, ii. 158. 228. 283. and Somerville, 272.

[2] Memoirs of Berwick, 1778 (English translation). And compare Lockhart's Commentaries, p. 368. Macpherson, sub ann. 1712 and 1713, passim.

[3] The pamphlets on Harley's side, and probably written under his inspection, for at least the first year after his elevation to power, such as one entitled "Faults on both Sides," ascribed to Richard Harley, his relation (Somers Tracts, xii. 678.) "Spectator's Address to the Whigs on Occasion of the Stabbing Mr. Harley," or the "Secret History of the October Club," 1711 (I believe by De Foe), seem to have for their object to reconcile as many of the whigs as possible to his administration, and to display his aversion to the violent tories. There can be no doubt that his first project was to have excluded the more acrimonious whigs, such as Wharton

The Pretender, meanwhile, had friends in the tory government more sincere, probably, and zealous than Oxford. In the year 1712 lord Bolingbroke, the duke of Buckingham, president of the council, and the duke of Ormond, were engaged in this connexion.[1] The last of

and Sunderland, as well as the duke of Marlborough and his wife, and coalesced with Cowper and Somers, both of whom were also in favour of the queen. But the steadiness of the whig party, and their resentment of his duplicity, forced him into the opposite quarters, though he never lost sight of his schemes for reconciliation.

The dissembling nature of this unfortunate statesman rendered his designs suspected. The whigs, at least in 1713, in their correspondence with the court of Hanover, speak of him as entirely in the Jacobite interest. Macpherson, ii. 472. 509. Cunningham, who is not on the whole unfavourable to Harley, says, that "men of all parties agreed in concluding that his designs were in the Pretender's favour. And it is certain that he affected to have it thought so." P. 303. Lockhart also bears witness to the reliance placed on him by the Jacobites, and argues with some plausibility (p. 377.)that the duke of Hamilton's appointment as ambassador to France, in 1712, must have been designed to further their object; though he believed that the death of that nobleman, in a duel with lord Mohun, just as he was setting out for Paris, put a stop to the scheme, and "questions if it was ever heartily re-assumed by lord Oxford."—"This I know, that his lordship, regretting to a friend of mine the duke's death, next day after it happened, told him that it disordered all their schemes, seeing Great Britain did not afford a person capable to discharge the trust which was committed to his grace, which sure was somewhat very extraordinary; and what other than the king's restoration could there be of so very great importance, or require such dexterity in managing, is not easy to imagine. And indeed it is more than probable that before his lordship could pitch upon one he might depend on in such weighty matters, the discord and division which happened betwixt him and the other ministers of state diverted or suspended his design of serving the king." Lockhart's Comment., p. 410. But there is more reason to doubt whether this design to serve the king ever existed.

[1] If we may trust to a book printed in 1717, with the title, "Minutes of Monsieur Mesnager's Negotiations with the Court of England towards the Close of the last Reign, written by himself," that agent of the French cabinet entered into an arrangement with Bolingbroke in March, 1712, about the Pretender. It was agreed that Louis should ostensibly abandon him, but should not be obliged, in case of the queen's death, not to use endeavours for his restoration. Lady Masham was wholly for this, but owned "the rage and irreconcilable aversion of the greatest part of the common people to her (the queen's) brother was grown to a height." But I must confess, that, although Macpherson has extracted the above passage, and a more judicious writer, Somerville, quotes the book freely as genuine, (Hist. of Anne, p. 581, &c.) I found in reading it what seemed to me the strongest grounds of suspicion. It is printed in England, without a word of preface to explain how such important secrets came to be divulged, or by what means the book came before the world; the correct information as to English customs and persons frequently betrays a native pen; the truth it contains, as to Jacobite intrigues, might have transpired from other sources, and in the main was pretty well suspected, as the Report of the Secret Committee on the Impeachments in 1715 shows; so that, upon the whole, I cannot but reckon it a forgery in order to injure the tory leaders.

But however this may be, we find Bolingbroke in correspondence with the Stuart agents in the latter part of 1712. Macpherson, 366. And his own correspondence with lord Strafford shows his dread and dislike of Hanover. (Bol. Corr. ii. 487. et alibi.) The duke of Buckingham wrote to St. Germains in July that year, with strong expressions of his attachment to the cause, and pressing the necessity of the prince's conversion to the protestant religion. Macpherson, 327. Ormond is mentioned in the duke of Berwick's letters as in correspondence with him; and Lockhart says there was no reason to make the least question of his affection to the king, whose friends were consequently well pleased at his appointment to succeed Marlborough in the command of the army, and thought it portended some good designs in favour of him. Id. 376.

Of Ormond's sincerity in this cause there can indeed be little doubt; but there is almost as much reason to suspect that of Bolingbroke as of Oxford; except that, having more rashness and less principle, he was better fitted for so dangerous a counter-revolution. But in reality he had a perfect contempt for the Stuart and tory notions of government, and would doubtless have served the house of Hanover with more pleasure, if his prospects in that quarter had been more favourable. It appears that in the session of 1714, when he had become lord of the ascendant, he disappointed the zealous royalists by his delays as much as his more cautious rival had done before. Lockhart, 470. This writer repeatedly asserts that a majority of the house of commons, both in the parliament of 1710 and that of 1713, wanted only the least encouragement from the court to have brought about the repeal of the act of settlement. But I think this very doubtful; and I am quite convinced that the nation would not have acquiesced in it. Lockhart is sanguine, and ignorant of England.

It must be admitted that part of the cabinet were steady to the protestant succession. Lord Dartmouth, lord Powlett, lord Trevor, and the bishop of London were certainly so; nor can

these, being in the command of the army, little glory as that brought him, might become an important auxiliary. Harcourt, the chancellor, though the proofs are not, I believe, so direct, has always been reckoned in the same interest. Several of the leading Scots peers, with little disguise, avowed their adherence to it; especially the duke of Hamilton, who, luckily perhaps for the kingdom, lost his life in a duel, at the moment when he was setting out on an embassy to France. The rage expressed by that faction at his death betrays the hopes they had entertained from him. A strong phalanx of tory members, called the October Club, though by no means entirely Jacobite, were chiefly influenced by those who were such. In the new parliament of 1713, the queen's precarious health excited the Stuart partisans to press forward with more zeal. The masque was more than half drawn aside; and, vainly urging the ministry to fulfil their promises while yet in time, they cursed the insidious cunning of Harley and the selfish cowardice of the queen. Upon her they had for some years relied. Lady Masham, the bosom favourite, was entirely theirs; and every word, every look of the sovereign, had been anxiously observed, in the hope of some indication that she would take the road which affection and conscience, as they fondly argued, must dictate. But whatever may have been the sentiments of Anne, her secret was never divulged, nor is there, as I apprehend, however positively the contrary is sometimes asserted, any decisive evidence whence we may infer that she even intended her brother's restoration.[1] The weakest of mankind

there be any reasonable doubt, as I conceive, of the duke of Shrewsbury. On the other side, besides Ormond, Harcourt, and Bolingbroke, were the duke of Buckingham, sir William Wyndham, and probably Mr. Bromley.

[1] It is said that the duke of Leeds, who was now in the Stuart interest, had sounded her in 1711, but with no success in discovering her intention. Macpherson, 212. The duke of Buckingham pretended, in the above-mentioned letter to St. Germains, June, 1712, that he had often pressed the queen on the subject of her brother's restoration, but could get no other answer than, "you see he does not make the least step to oblige me;" or, "he may thank himself for it: he knows I always loved him better than the other." Id. 328. This alludes to the Pretender's pertinacity, as the writer thought it, in adhering to his religion; and it may be very questionable, whether he had ever such conversation with the queen at all. But, if he had, it does not lead to the supposition, that under all circumstances she meditated his restoration. If the book under the name of Mesnager is genuine, which I much doubt, Mrs. Masham had never been able to elicit anything decisive of her majesty's inclinations; nor do any of the Stuart correspondents in Macpherson pretend to know her intentions with certainty. The following passage in Lockhart seems rather more to the purpose. On his coming to parliament in 1710, with a "high monarchical address," which he had procured from the county of Edinburgh, "the queen told me, though I had almost always opposed her measures, she did not doubt of my affection to her person, and hoped I would not concur in the design against Mrs. Masham, or for bringing over the prince of Hanover. At first I was somewhat surprised, but recovering myself, I assured her I should never be accessory to the imposing any hardship or affront upon her; and as for the prince of Hanover, her majesty might judge from the address I had read, that I should not be acceptable to my constituents if I gave my consent for bringing over any of that family, either now or at any time hereafter. At that she smiled, and I withdrew; and then she said to the duke (Hamilton), she believed I was an honest man and a fair dealer; and the duke replied, he could assure her I liked her majesty and all her father's bairns." P. 317. It appears in subsequent parts of this book, that Lockhart and his friends were confident of the queen's inclinations in the last year of her life, though not of her resolution.

The truth seems to be, that Anne was very dissembling, as Swift repeatedly says in his private letters, and as feeble and timid persons in high station generally are; that she hated the house of Hanover, and in some measure feared them; but that she had no regard for the Pretender (for it is really absurd to talk like Somerville of natural affection under all the circumstances), and feared him a great deal more than the other; that she had however some scruples about his right, which were counterbalanced by her attachment to the church of England, consequently, that she was wavering among opposite impulses, but with a predominating timidity which would have probably kept all right.

have generally an instinct of self-preservation which leads them right, and perhaps more than stronger minds possess; and Anne could scarcely help perceiving that her own deposition from the throne would be the natural consequence of once admitting the reversionary right of one whose claim was equally good to the possession. The assertors of hereditary descent could acquiesce in her usurpation no longer than they found it necessary for their object; if her life should be protracted to an ordinary duration, it was almost certain that Scotland first, and afterwards England, would be wrested from her impotent grasp. Yet, though I believe the queen to have been sensible of this, it is impossible to pronounce with certainty that either through pique against the house of Hanover, or inability to resist her own counsellors, she might not have come into the scheme of altering the succession.

But if neither the queen nor her lord treasurer were inclined to take that vigorous course which one party demanded, they at least did enough to raise just alarm in the other; and it seems strange to deny that the protestant succession was in danger. As lord Oxford's ascendancy diminished, the signs of impending revolution became less equivocal. Adherents of the house of Stuart were placed in civil and military trust; an Irish agent of the Pretender was received in the character of envoy from the court of Spain; the most audacious manifestations of disaffection were overlooked.[1] Several even in parliament spoke with contempt and aversion of the house of Hanover.[2] It

[1] The duchess of Gordon, in June, 1711, sent a silver medal to the faculty of advocates at Edinburgh, with a head on one side, and the inscription, Cujus est; on the other, the British isles, with the word Reddite. The dean of faculty, Dundas of Arniston, presented this medal; and there seems reason to believe that a majority of the advocates voted for its reception. Somerville, p. 452. Bolingbroke, in writing on the subject to a friend, it must be owned, speaks of the proceeding with due disapprobation. Bolingbroke Corresp. i. 343. No measures however were taken to mark the court's displeasure.

"Nothing is more certain," says Bolingbroke in his letter to sir William Wyndham, perhaps the finest of his writings, "than this truth, that there was at that time *no formed design* in the party, whatever views some particular men might have, against his majesty's accession to the throne." P. 22. This is in effect to confess a great deal: and in other parts of the same letter, he makes admissions of the same kind: though he says that he and other tories had determined, before the queen's death, to have no connexion with the Pretender, on account of his religious bigotry. P. 111.

[2] Lockhart gives us a speech of sir William Whitelock in 1714, bitterly inveighing against the elector of Hanover, who, he hoped, would never come to the crown. Some of the whigs cried out on this that he should be brought to the bar; when Whitelock said he would not recede an inch; he hoped the queen would outlive that prince, and in comparison to her he did not value all the princes of Germany one farthing. P. 469. Swift, in "Some Free Thoughts upon the present State of Affairs," 1714, speaks with much contempt of the house of Hanover and its sovereign; and suggests, in derision, that the infant son of the electoral prince might be invited to take up his residence in England. He pretends in this tract, as in all his writings, to deny entirely that there was the least tendency towards jacobitism, either in any one of the ministry, or even any eminent individual out of it; but with so impudent a disregard of truth, that I am not perfectly convinced of his own innocence as to that intrigue. Thus, in his Inquiry into the Behaviour of the Queen's last Ministry, he says, "I remember, during the last treaty of peace, discoursing at several times with some very eminent persons of the opposite side with whom I had long acquaintance. I asked them seriously, whether they or any of their friends did in earnest believe, or suspect the queen or the ministry to have any favourable regards towards the Pretender? They all confessed for themselves, that they believed nothing of the matter," &c. He then tells us that he had the curiosity to ask almost every person in great employment, whether they knew or had heard of any one particular man, except professed nonjurors, that discovered the least inclination towards the Pretender; and the whole number they could muster up did not amount to above five or six; among whom one was a certain old lord lately dead, and one a private gentleman, of little consequence and of a broken fortune, &c. (Vol. xv. p. 94. edit. 12mo. 1765.) This acute observer of mankind well knew that lying is frequently successful in the ratio of its effrontery and extravagance. There are

was surely not unreasonable in the whig party to meet these assaults of the enemy with something beyond the ordinary weapons of an opposition. They affected no apprehensions that it was absurd to entertain. Those of the opposite faction, who wished well to the protestant interest, and were called Hanoverian tories, came over to their side, and joined them on motions that the succession was in danger.[1] No one hardly, who either hoped or dreaded the consequences, had any doubts upon this score; and it is only a few moderns who have assumed the privilege of setting aside the persuasion of contemporaries upon a subject which contemporaries were best able to understand.[2] Are we then to censure the whigs for urging on the elector of Hanover, who, by a strange apathy or indifference, seemed negligent of the great prize reserved for him; or is the bold step of demanding a writ of summons for the electoral prince as duke of Cambridge to pass for a factious insult on the queen, because, in her imbecility, she was leaving the crown to be snatched at by the first comer, even if she were not, as they suspected, in some conspiracy to bestow it on a proscribed heir?[3] I am much inclined to believe that the great majority of the nation were in favour of the protestant succession; but if the princes of the house of Brunswic had seemed to retire from the contest, it might have been impracticable to resist a predominant faction in the council and in parliament; especially if the son of James, listening to the remonstrances of his English adherents, could have been induced to renounce

however, some passages in this tract, as in others written by Swift, in relation to that time, which serve to illustrate the obscure machinations of those famous last years of the queen.

[1] On a motion in the house of lords that the protestant succession was in danger, April 5. 1714, the ministry had only a majority of 76 to 69, several bishops and other tories voting against them. Parl. History vi. 1334. Even in the commons the division was but 256 to 208. Id. 1347.

[2] Somerville has a separate dissertation on the danger of the protestant succession, intended to prove that it was in no danger at all, except through the violence of the whigs in exasperating the queen. It is true that Lockhart's Commentaries were not published at this time; but he had Macpherson before him, and the Memoirs of Berwick, and even gave credit to the authenticity of Mesnager, which I do not. But this sensible, and on the whole impartial writer, had contracted an excessive prejudice against the whigs of that period as a party, though he seems to adopt their principles. His dissertation is a laboured attempt to explain away the most evident facts, and to deny what no one of either party at that time would probably have in private denied.

[3] The queen was very ill about the close of 1713; in fact it became evident, as it had long been apprehended, that she could not live much longer. The Hanoverians, both whigs and tories, urged that the electoral prince should be sent for; it was thought that whichever of the competitors should have the start upon her death would succeed in securing the crown. Macpherson, 385. 546. 557. et alibi. Can there be a more complete justification of this measure, which Somerville and the tory writers treat as disrespectful to the queen? The Hanoverian envoy, Schutz, demanded the writ for the electoral prince without his master's orders; but it was done with the advice of all the whig leaders, Id. 592., and with the sanction of the electress Sophia, who died immediately after. "All who are for Hanover believe the coming of the electoral prince to be advantageous; all those against it are frightened at it." Id. 596. It was doubtless a critical moment; and the court of Hanover might be excused for pausing in the choice of dangers, as the step must make the queen decidedly their enemy. She was greatly offended, and forbad the Hanoverian minister to appear at court. Indeed she wrote to the elector, on May 19., expressing her disapprobation of the prince's coming over to England, and "her determination to oppose a project so contrary to her royal authority, however fatal the consequences may be." Id. 621. Oxford and Bolingbroke intimate the same. Id. 593., and see Bolingbroke Corresp. iv. 512., a very strong passage. The measure was given up, whether from unwillingness on the part of George to make the queen irreconcilable, or, as is at least equally probable, out of jealousy of his son. The former certainly disappointed his adherents by more apparent apathy than their ardour required; which will not be surprising, when we reflect that, even upon the throne, he seemed to care very little about it. Macpherson, sub ann. 1714. passim.

a faith which, in the eyes of too many, was the sole pretext for his exclusion.[1]

The queen's death, which came at last perhaps rather more quickly than was foreseen, broke for ever the fair prospects of her family. George I., unknown and absent, was proclaimed without a single murmur, as if the crown had passed in the most regular descent. But this was a momentary calm. The Jacobite party, recovering from the first consternation, availed itself of its usual arms, and of those with which the new king injudiciously supplied it. Many of the tories who would have acquiesced in the act of settlement seem to have looked on a leading share in the administration as belonging of right to what was called the church party, and complained of the formation of a ministry on the whig principle. In later times, also, it has been not uncommon to censure George I. for governing, as it is called, by a faction. Nothing can be more unreasonable than this reproach. Was he to select those as his advisers, who had been, as we know and as he believed, in a conspiracy with his competitor? Was lord Oxford, even if the king thought him faithful, capable of uniting with any public men, hated as he was on each side? Were not the tories as truly a faction as their adversaries, and as intolerant during their own power?[2] Was there not, above all, a danger that, if some of one denomination were drawn by pique and disappointment into the ranks of the Jacobites, the whigs, on the other hand, so ungratefully and perfidiously recompensed for their arduous services to the house of Hanover, might think all royalty irreconcilable with the principles of freedom, and raise up a republican party, of which the scattered elements were sufficiently discernible in the nation?[3] The exclusion indeed of the whigs would have been so monstrous both in honour and policy, that the censure has generally fallen on their alleged monopoly of public offices. But the mischiefs of a disunited, hybrid ministry had been sufficiently manifest in the two last reigns; nor could George, a stranger to his people and their constitution, have undertaken without ruin that most difficult task of balancing parties and persons, to which the great mind of William had proved unequal. Nor is it true that the tories, as such, were proscribed; those who chose to serve the court

[1] He was strongly pressed by his English adherents to declare himself a protestant. He wrote a very good answer. Macpherson, 436. Madame de Maintenon says, some catholics urged him to the same course, "par une politique poussée un peu trop loin." Lettres à la Princesse des Ursins, ii. 428.

[2] The rage of the tory party against the queen and lord Oxford for retaining whigs in office is notorious from Swift's private letters, and many other authorities. And Bolingbroke, in his letter to sir W. Wyndham, very fairly owns their intention "to fill the employments of the kingdom, down to the meanest, with tories."—"We imagined," he proceeds, "that such measures, joined to the advantages of our numbers and our property, would secure us against all attempts during her reign; and that we should soon become too considerable not to make our terms in all events which might happen afterwards; concerning which, to speak truly, I believe few or none of us had any very settled resolution." P. 11. It is rather amusing to observe that those who called themselves the tory or church party, seem to have fancied they had a natural right to power and profit, so that an injury was done them when these rewards went another way; and I am not sure that something of the same prejudice has not been perceptible in times a good deal later.

[3] Though no republican party, as I have elsewhere observed, could with any propriety be said to exist, it is easy to perceive that a certain degree of provocation from the crown might have brought one together in no slight force. These two propositions are not wholly incompatible.

met with court favour; and in the very outset the few men of sufficient eminence, who had testified their attachment to the succession, received equitable rewards; but, most happily for himself and the kingdom, most reasonably according to the principles on which alone his throne could rest, the first prince of the house of Brunswic gave a decisive preponderance in his favour to Walpole and Townshend above Harcourt and Bolingbroke.

The strong symptoms of disaffection which broke out in a few months after the king's accession, and which can be ascribed to no grievance, unless the formation of a whig ministry was to be termed one, prove the taint of the late times to have been deep seated and extensive.[1] The clergy, in very many instances, were a curse rather than a blessing to those over whom they were set; and the people, while they trusted that from those polluted fountains they could draw the living waters of truth, became the dupes of factious lies and sophistry. Thus encouraged, the heir of the Stuarts landed in Scotland; and the spirit of that people being in a great measure Jacobite, and very generally averse to the union, he met with such success as, had their independence subsisted, would probably have established him on the throne. But Scotland was now doomed to wait on the fortunes of her more powerful ally; and, on his invasion of England, the noisy partisans of hereditary right discredited their faction by its cowardice. Few rose in arms to support the rebellion, compared with those who desired its success, and did not blush to see the gallant savages of the Highlands shed their blood that a supine herd of priests and country gentlemen might enjoy the victory. The severity of the new government after the rebellion has been often blamed; but I know not whether, according to the usual rules of policy, it can be proved that the execution of two peers and thirty other persons, taken with arms in flagrant rebellion, was an unwarrantable excess of punishment. There seems a latent insinuation in those who have argued on the other side,

[1] This is well put by bishop Willis in his speech on the bill against Atterbury, Parl. Hist. viii. 305. In a pamphlet, entitled English Advice to the Freeholders (Somers Tracts, xiii. 521.), ascribed to Atterbury himself, a most virulent attack is made on the government, merely because what he calls the church party had been thrown out of office. "Among all who call themselves whigs," he says, "and are of any consideration as such, name me the man I cannot prove to be an inveterate enemy to the church of England; and I will be a convert that instant to their cause." It must be owned perhaps that the whig ministry might better have avoided some reflections on the late times in the addresses of both houses; and still more some not very constitutional recommendations to the electors, in the proclamation calling the new parliament in 1714. Parl. Hist. vi. 44. 50. "Never was prince more universally well received by subjects than his present majesty on his arrival; and never was less done by a prince to create a change in people's affections. But so it is, a very observable change hath happened. Evil infusions were spread on the one hand; and, it may be, there was too great a stoicism or contempt of popularity on the other." Argument to prove the Affections of the People of England to be the best Security for the Government, p. 11. (1716.) This is the pamphlet written to recommend lenity towards the rebels, which Addison has answered in the Freeholder. It is invidious, and perhaps secretly Jacobite. Bolingbroke observes, in the letter already quoted, that the Pretender's journey from Bar, in 1714, was a mere farce, no party being ready to receive him; but "the menaces of the whigs, backed by some very rash declarations [those of the king], and little circumstances of humour, which frequently offend more than real injuries, and by the entire change of all persons in employment, blew up the coals." P. 34. Then, he owns, the tories looked to Bar. "The violence of the whigs forced them into the arms of the Pretender." It is to be remarked on all this, that, by Bolingbroke's own account, the tories, if they had no "formed design" or "settled resolution" that way, were not very determined in their repugnance before the queen's death; and that the chief violence of which they complained was, that George chose to employ his friends rather than his enemies.

as if the Jacobite rebellion, being founded on an opinion of right, was more excusable than an ordinary treason—a proposition which it would not have been quite safe for the reigning dynasty to acknowledge. Clemency, however, is the standing policy of constitutional governments, as severity is of despotism; and, if the ministers of George I. might have extended it to part of the inferior sufferers (for surely those of higher rank were the first to be selected) with safety to their master, they would have done well in sparing him the odium that attends all political punishments.[1]

It will be admitted on all hands, at the present day, that the charge of high treason in the impeachments against Oxford and Bolingbroke was an intemperate excess of resentment at their scandalous dereliction of the public honour and interest. The danger of a sanguinary revenge inflamed by party spirit is so tremendous that the worst of men ought perhaps to escape rather than suffer by a retrospective, or, what is no better, a constructive, extension of the law. The particular charge of treason was, that in the negotiation for peace they had endeavoured to procure the city of Tournay for the king of France; which was maintained to be an adhering to the queen's enemies within the statute of Edward III.[2] But, as this construction could hardly be brought within the spirit of that law, and the motive was certainly not treasonable or rebellious, it would have been incomparably more constitutional to treat so gross a breach of duty as a misdemeanour of the highest kind. This angry temper of the commons led ultimately to the abandonment of the whole impeachment against lord Oxford; the upper house, though it had committed Oxford to the Tower, which seemed to prejudge the question as to the treasonable character of the imputed offence, having two years afterwards resolved that the charge of treason should be first determined, before they would enter on the articles of less importance; a decision with which the commons were so ill satisfied, that they declined to go forward with the prosecution. The resolution of the peers was hardly conformable to precedent, to analogy, or to the dignity of the house of commons, nor will it perhaps be deemed binding on any future occasion; but the ministers prudently suffered themselves to be beaten rather than aggravate the fever of the people by a prosecution so full of delicate and hazardous questions.[3]

[1] The trials after this rebellion were not conducted with quite that appearance of impartiality which we now exact from judges. Chief baron Montagu reprimanded a jury for acquitting some persons indicted for treason; and Tindal, an historian very strongly on the court side, admits that the dying speeches of some of the sufferers made an impression on the people, so as to increase rather than lessen the number of Jacobites. Continuation of Rapin, p. 501. (folio edit.) There seems however, upon the whole, to have been greater and less necessary severity after the rebellion in 1745; and upon this latter occasion it is impossible not to reprobate the execution of Mr. Ratcliffe brother of that earl of Derwentwater who had lost his head in 1716, after an absence of thirty years from his country, to the sovereign of which he had never professed allegiance, nor could owe any, except by the fiction of our law.

[2] Parl. Hist. 73. It was carried against Oxford by 247 to 127, sir Joseph Jekyll strongly opposing it, though he had said before (Id. 67.) that they had more than sufficient evidence against Bolingbroke on the statute of Edward III. A motion was made in the lords, to consult the judges whether the articles amounted to treason, but lost by 84 to 52. Id. 154. Lord Cowper on this occasion challenged all the lawyers in England to disprove that proposition. The proposal of reference to the judges was perhaps premature; but the house must surely have done this before their final sentence, or shown themselves more passionate than in the case of lord Strafford.

[3] Parl. Hist. vii. 486. The division was 88 to 56. There was a schism in the whig party at this time; yet I should suppose the ministers might have prevented this defeat, if they had

One of these questions, and by no means the least important, would doubtless have arisen upon a mode of defence alleged by the earl of Oxford in the house, when the articles of impeachment were brought up. "My lords," he said, "if ministers of state, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, it may, one day or other, be the case of all the members of this august assembly." (Parl. Hist. vii. 105.) It was indeed undeniable that the queen had been very desirous of peace, and a party, as it were, to all the counsels that tended to it. Though it was made a charge against the impeached lords, that the instructions to sign the secret preliminaries of 1711 with M. Mesnager, on the part of France, were not under the great seal, nor countersigned by any minister, they were certainly under the queen's signet, and had all the authority of her personal command. This must have brought on the yet unsettled and very delicate question of ministerial responsibility in matters where the sovereign has interposed his own command; a question better reserved, it might then appear, for the loose generalities of debate than to be determined with the precision of criminal law. Each party, in fact, had in its turn made use of the queen's personal authority as a shield; the whigs availed themselves of it to parry the attack made on their ministry, after its fall, for an alleged mismanagement of the war in Spain before the battle of Almanza;[1] and the modern constitutional theory was by no means so established in public opinion as to bear the rude brunt of a legal argument. Anne herself, like all her predecessors, kept in her own hands the reins of power; jealous, as such feeble characters usually are, of those in whom she was forced to confide, (especially after the ungrateful return of the duchess of Marlborough for the most affectionate condescension), and obstinate in her judgment, from the very consciousness of its weakness, she took a share in all business, frequently presided in meetings of the cabinet, and sometimes gave directions without their advice.[2] The defence set up by lord Oxford would undoubtedly not be tolerated

been anxious to do so. It seems, however, by a letter in Coxe's Memoirs of Walpole, vol. ii. p. 123., that the government were for dropping the charge of treason against Oxford, "it being very certain that there is not sufficient evidence to convict him of that crime," but for pressing those of misdemeanour.

[1] Parl. Hist. vi. 972. Burnet, 560., makes some observations on the vote passed on this occasion, censuring the late ministers for advising an offensive war in Spain. "A resolution in council is only the sovereign's act, who upon hearing his counsellors deliver their opinions, forms his own resolution; a counsellor may indeed be liable to censure for what he may say at that board; but the resolution taken there has been hitherto treated with a silent respect; but by that precedent it will be hereafter subject to a parliamentary inquiry." Speaker Onslow justly remarks that these general and indefinite sentiments are liable to much exception, and that the bishop did not try them by his whig principles. The first instance where I find the responsibility of some one for every act of the crown strongly laid down is in a speech of the duke of Argyle, in 1739. Parl. Hist. ix. 1138. "It is true," he says, "the nature of our constitution requires that public acts should be issued out in his majesty's name; but for all that, my lords, he is not the author of them."

[2] "Lord Bolingbroke used to say that the restraining orders to the duke of Ormond were proposed in the cabinet council, in the queen's presence, by the earl of Oxford, who had not communicated his intention to the rest of the ministers; and that lord Bolingbroke was on the point of giving his opinion against it, when the queen, without suffering the matter to be debated, directed these orders to be sent, and broke up the council. This story was told by the late lord Bolingbroke to my father." Note by lord Hardwicke on Burnet. (Oxf. edit. vi. 119.) The noble annotator has given us the same anecdote in the Hardwicke State Papers, ii. 482.; but with this variance, that lord Bolingbroke there ascribes the orders to the queen herself, though he conjectured them to have proceeded from lord Oxford.

at present, if alleged in direct terms, by either house of parliament; however it may sometimes be deemed a sufficient apology for a minister, by those whose bias is towards a compliance with power, to insinuate that he must either obey against his conscience, or resign against his will.

Upon this prevalent disaffection, and the general dangers of the established government, was founded that measure so frequently arraigned in later times, the substitution of septennial for triennial parliaments. The ministry deemed it too perilous for their master, certainly for themselves, to encounter a general election in 1717; but the arguments adduced for the alteration, as it was meant to be permanent, were drawn from its permanent expediency. Nothing can be more extravagant than what is sometimes confidently bolted out by the ignorant, that the legislature exceeded its rights by this enactment; or, if that cannot legally be advanced, that it at least violated the trust of the people, and broke in upon the ancient constitution. The law for triennial parliaments was of little more than twenty years' continuance. It was an experiment which, as was argued, had proved unsuccessful; it was subject, like every other law, to be repealed entirely, or to be modified at discretion. As a question of constitutional expediency, the septennial bill was doubtless open at the time to one serious objection. Every one admitted that a parliament subsisting indefinitely during a king's life, but exposed at all times to be dissolved at his pleasure, would become far too little independent of the people, and far too much so upon the crown. But if the period of its continuance should thus be extended from three to seven years, the natural course of encroachment of those in power, or some momentous circumstances like the present, might lead to fresh prolongations, and gradually to an entire repeal of what had been thought so important a safeguard of its purity. Time has happily put an end to apprehensions which are not on that account to be reckoned unreasonable.[1]

Many attempts have been made to obtain a return to triennial parliaments; the most considerable of which was in 1733, when the powerful talents of Walpole and his opponents were arrayed on this great question. It has been less debated in modern times than some others connected with parliamentary reformation. So long indeed as the sacred duties of choosing the representatives of a free nation shall be perpetually disgraced by tumultuary excess, or, what is far worse, by gross corruption and ruinous profusion, evils which no effectual pains are taken to redress, and which some apparently desire to perpetuate, were it only to throw discredit upon the popular part of the constitution, it would be evidently inexpedient to curtail the present duration of parliament. But even, independently of this not insuperable objection, it may well be doubted whether triennial elections would make much perceptible difference in the course of government, and whether that difference would on the whole be beneficial. It will be found, I believe, on a

[1] Parl. Hist. vii. 292. The apprehension that parliament, having taken this step, might go on still farther to protract its own duration, was not quite idle. We find from Coxe's Memoirs of Walpole, ii. 217., that in 1720, when the first septennial house of commons had nearly run its term, there was a project of once more prolonging its life.

retrospect of the last hundred years, that the house of commons would have acted, in the main, on the same principles, had the elections been more frequent; and certainly the effects of a dissolution, when it has occurred in the regular order, have seldom been very important. It has also to be considered whether an assembly which so much takes to itself the character of a deliberative council on all matters of policy, ought to follow with the precision of a weather-glass the unstable prejudices of the multitude. There are many who look too exclusively at the functions of parliament, as the protector of civil liberty against the crown; functions, it is true, most important, yet not more indispensable than those of steering a firm course in domestic and external affairs, with a circumspectness and providence for the future, which no wholly democratical government has ever yet displayed. It is by a middle position between an oligarchical senate and a popular assembly, that the house of commons is best preserved both in its dignity and usefulness, subject indeed to swerve towards either character by the continual variation of forces which act upon the vast machine of our commonwealth. But what seems more important than the usual term of duration, is that this should be permitted to take its course, except in cases where some great change of national policy may perhaps justify its abridgment. The crown would obtain a very serious advantage over the house of commons, if it should become an ordinary thing to dissolve parliament for some petty ministerial interest, or to avert some unpalatable resolution. Custom appears to have established, and with some convenience, the substitution of six for seven years as the natural life of a house of commons; but an habitual irregularity in this respect might lead in time to consequences that most men would deprecate. And it may here be permitted to express a hope, that the necessary dissolution of parliament within six months of a demise of the crown will not long be thought congenial to the spirit of our modern government.

A far more unanimous sentence has been pronounced by posterity upon another great constitutional question, that arose under George I. Lord Sunderland persuaded the king to renounce his important prerogative of making peers; and a bill was supported by the ministry, limiting the house of lords, after the creation of a very few more, to its actual numbers. The Scots were to have twenty-five hereditary, instead of sixteen elective, members of the house; a provision neither easily reconciled to the union, nor required by the general tenor of the bill. This measure was carried with no difficulty through the upper house, whose interests were so manifestly concerned in it. But a similar motive, concurring with the efforts of a powerful malcontent party, caused its rejection by the commons. (Parl. Hist. vii. 589.) It was justly thought a proof of the king's ignorance or indifference in every thing that concerned his English crown, that he should have consented to so momentous a sacrifice; and Sunderland was reproached for so audacious an endeavour to strengthen his private faction at the expense of the fundamental laws of the monarchy. Those who maintained the expediency of limiting the peerage had recourse to uncertain theories as to the ancient constitution, and denied this prerogative to have been originally vested in the crown. A more plausible argument was derived from

the abuse, as it was then generally accounted, of creating at once twelve peers in the late reign, for the sole end of establishing a majority for the court; a resource which would be always at the command of successive factions, till the British nobility might become as numerous and venal as that of some European states. It was argued that there was a fallacy in concluding the collective power of the house of lords to be augmented by its limitation, because every single peer would evidently become of more weight in the kingdom; that the wealth of the whole body must bear a less proportion to that of the nation, and would possibly not exceed that of the lower house, while on the other hand it might be indefinitely multiplied by fresh creations; that the crown would lose one great engine of corrupt influence over the commons, which could never be truly independent, while its principal members were looking on it as a stepping-stone to hereditary honours.[1]

Though these reasonings, however, are not destitute of considerable weight, and the unlimited prerogative of augmenting the peerage is liable to such abuses, at least in theory, as might overthrow our form of government; while in the opinion of some, whether erroneous or not, it has actually been exerted with too little discretion, the arguments against any legal limitation seem more decisive. The crown has been carefully restrained by statutes, and by the responsibility of its advisers; the commons, if they transgress their boundaries, are annihilated by a proclamation; but against the ambition, or, what is much more likely, the perverse haughtiness of the aristocracy, the constitution has not furnished such direct securities. And as this would be prodigiously enhanced by a consciousness of their power, and by a sense of self-importance which every peer would derive from it, after the limitation of their numbers, it might break out in pretensions very galling to the people, and in an oppressive extension of privileges which were already sufficiently obnoxious and arbitrary. It is true that the resource of subduing an aristocratical faction by the creation of new peers could never be constitutionally employed, except in the not very probable case of a nearly equal balance; but it might usefully hang over the heads of the whole body, and deter them from any gross excesses of faction or oligarchical spirit. The nature of our government requires a general harmony between the two houses of parliament; and indeed any systematic opposition between them would of necessity bring on the subordination of one to the other in too marked a manner; nor had there been wanting, within the memory of man, several instances of such jealous and even hostile sentiments as could only be allayed by the inconvenient remedies of a prorogation or a dissolution. These animosities were likely to revive with more bitterness, when the country gentlemen and leaders of the commons should come to look on the nobility as a class into which they could not enter, and the latter should forget more and more, in their inaccessible dignity, the near approach of that gentry to themselves in respectability of birth and extent of possessions.[2]

[1] The arguments on this side are urged by Addison, in the Old Whig; and by the author of a tract, entitled Six Questions Stated and Answered.

[2] The speeches of Walpole and others, in the Parliamentary Debates, contain the whole force of the arguments against the peerage bill. Steele, in the Plebeian, opposed his old

These innovations on the part of the new government were maintained on the score of its unsettled state, and want of hold on the national sentiment. It may seem a reproach to the house of Hanover that, connected as it ought to have been with the names most dear to English hearts, the protestant religion and civil liberty, it should have been driven to try the resources of tyranny, and to demand more authority, to exercise more control, than had been necessary for the worst of their predecessors. Much of this disaffection was owing to the cold reserve of George I., ignorant of the language, alien from the prejudices of his people, and continually absent in his electoral dominions, to which he seemed to sacrifice the nation's interest and the security of his own crown. It is certain that the acquisition of the duchies of Bremen and Verden for Hanover in 1716 exposed Great Britain to a very serious danger, by provoking the king of Sweden to join in a league for the restoration of the Pretender.[1] It might have been impossible (such was the precariousness of our revolution settlement), to have made the abdication of the electorate a condition of the house of Brunswic's succession; but the consequences of that connexion, though much exaggerated by the factious and disaffected, were in various manners detrimental to English interests during these two reigns; and not the least, in that they estranged the affections of the people from sovereigns whom they regarded as still foreign.

The tory and Jacobite factions, as I have observed, were powerful in the church. This had been the case ever since the revolution. The avowed non-jurors were busy with the press; and poured forth, especially during the encouragement they received in part of Anne's reign, a multitude of pamphlets, sometimes argumentative, more often virulently libellous. Their idle cry that the church was in danger, which both houses in 1704 thought fit to deny by a formal vote, alarmed a senseless multitude. Those who took the oaths were frequently known partisans of the exiled family; and those who affected to disclaim that cause defended the new settlement with such timid or faithless arms as served only to give a triumph to the adversary. About the end of William's reign grew up the distinction of high and low churchmen; the first distinguished by great pretensions to sacerdotal power, both spiritual and temporal, by a repugnance to toleration, and by a firm adherence to the tory principle in the state; the latter by the opposite characteristics. These were pitched against each other in the two

friend and co-adjutor, Addison, who forgot a little in party and controversy their ancient friendship.

Lord Sunderland held out, by way of inducements to the bill, that the lords would part with scandalum magnatum, and permit the commons to administer an oath; and that the king would give up the prerogative of pardoning after an impeachment. Coxe's Walpole, ii. 172. Mere trifles, in comparison with the innovations projected.

[1] The letters in Coxe's Memoirs of Walpole, vol. ii., abundantly show the German nationality, the impolicy and neglect of his duties, the rapacity and petty selfishness of George I. The whigs were much dissatisfied; but fear of losing their places made them his slaves. Nothing can be more demonstrable than that the king's character was the main cause of preserving Jacobitism, as that of his competitor was of weakening it.

The habeas corpus was several times suspended in this reign, as it had been in that of William. Though the perpetual conspiracies of the Jacobites afforded a sufficient apology for this measure, it was indiviously held up as inconsistent with a government which professed to stand on the principles of liberty. Parl. Hist. v. 153. 267. 604.; vii. 276.; viii. 38. But some of these suspensions were too long, especially the last, from October 1722 to October 1723. Sir Joseph Jekyll, with his usual zeal for liberty, moved to reduce the time to six months.

houses of convocation, an assembly which virtually ceased to exist under George I.

The convocation of the province of Canterbury (for that of York seems never to have been important) is summoned by the archbishop's writ, under the king's direction, along with every parliament, to which it bears analogy both in its constituent parts and in its primary functions. It consists (since the reformation) of the suffragan bishops, forming the upper house; of the deans, archdeacons, a proctor or proxy for each chapter, and two from each diocese, elected by the parochial clergy, who together constitute the lower house. In this assembly subsidies were granted, and ecclesiastical canons enacted. In a few instances, under Henry VIII. and Elizabeth, they were consulted as to momentous questions affecting the national religion; the supremacy of the former was approved in 1533, the articles of faith were confirmed in 1562, by the convocation. But their power to enact fresh canons without the king's licence, was expressly taken away by a statute of Henry VIII.; and, even subject to this condition, is limited by several later acts of parliament, (such as the acts of uniformity under Elizabeth and Charles II., that confirming, and therefore rendering unalterable, the thirty-nine articles, those relating to non-residence and other church matters,) and still more perhaps by the doctrine gradually established in Westminster Hall, that new ecclesiastical canons are not binding on the laity, so greatly that it will ever be impossible to exercise it in any effectual manner. The convocation accordingly, with the exception of 1603, when they established some regulations, and of 1640 (an unfortunate precedent), when they attempted some more, had little business but to grant subsidies, which however were from the time of Henry VIII. always confirmed by an act of parliament; an intimation, no doubt, that the legislature did not wholly acquiesce in their power even of binding the clergy in a matter of property. This practice of ecclesiastical taxation was silently discontinued in 1664; at a time when the authority and pre-eminence of the church stood very high, so that it could not then have seemed the abandonment of an important privilege. From this time the clergy have been taxed at the same rate and in the same manner with the laity.[1]

It was the natural consequence of this cessation of all business, that the convocation, after a few formalities, either adiourned itself or was

[1] "It was first settled by a verbal agreement between archbishop Sheldon and the lord chancellor Clarendon, and tacitly given into by the clergy in general as a great ease to them in taxations. The first public act of any kind relating to it was an act of parliament in 1665, by which the clergy were, in common with the laity, charged with the tax given in that act, and were discharged from the payment of the subsidies they had granted before in convocation; but in this act of parliament of 1665 there is an express saving of the right of the clergy to tax themselves in convocation, if they think fit; but that has been never done since, nor attempted, as I know of, and the clergy have been constantly from that time charged with the laity in all public aids to the crown by the house of commons. In consequence of this (but from what period I cannot say), without the intervention of any particular law for it, except what I shall mention presently, the clergy (who are not lords of parliament) have assumed, and without any objection enjoyed, the privilege of voting in the election of members of the house of commons, in virtue of their ecclesiastical freeholds. This has constantly been practised from the time it first began; there are two acts of parliament which suppose it to be now a right. The acts are 10 Anne, c. 23.; 18 Geo. II. c. 18. Gibson, bishop of London, said to me, that this (the taxation of the clergy out of convocation) was the greatest alteration in the constitution ever made without an express law." Speaker Onslow's note on Burnet (Oxford edition iv. 523.)

prorogued by a royal writ; nor had it ever, with the few exceptions above noticed, sat for more than a few days, till its supply could be voted. But, about the time of the revolution, the party most adverse to the new order sedulously propagated a doctrine that the convocation ought to be advised with upon all questions affecting the church, and ought even to watch over its interests as the parliament did over those of the kingdom.[1] The commons had so far encouraged this faction as to refer to the convocation the great question of a reform in the liturgy for the sake of comprehension, as has been mentioned in the last chapter; and thus put a stop to the king's design. It was not suffered to sit much during the rest of that reign, to the great discontent of its ambitious hieragogues. The most celebrated of these, Atterbury, published a book, entitled the Rights and Privileges of an English Convocation, in answer to one by Wake, afterwards archbishop of Canterbury. The speciousness of the former, sprinkled with competent learning on the subject, a graceful style, and an artful employment of topics, might easily delude, at least the willing reader. Nothing indeed could, on reflection, appear more inconclusive than Atterbury's arguments. Were we even to admit the perfect analogy of a convocation to a parliament, it could not be doubted that the king may, legally speaking, prorogue the latter at his pleasure; and that, if neither money were required to be granted nor laws to be enacted, a session would be very short. The church had by prescription a right to be summoned in convocation; but no prescription could be set up for its longer continuance than the crown thought expedient; and it was too much to expect that William III. was to gratify his half-avowed enemies with a privilege of remonstrance and interposition they had never enjoyed. In the year 1701 the lower house of convocation pretended to a right of adjourning to a different day from that fixed by the upper, and consequently of holding separate sessions. They set up other unprecedented claims to independence, which were checked by a prorogation.[2] Their aim was in all respects to assimilate themselves to the house of commons, and thus both to set up the convocation itself as an assembly collateral to parliament, and in the main independent of it, and to maintain their co-ordinate power and equality in synodical dignity to the prelates' house. The succeeding reign, however, began under tory auspices; and the convocation was in more activity for some years than at any former period. The lower house of that assembly still distinguished itself by the most factious spirit, and especially by insolence towards the bishops, who passed in general for whigs, and whom, while pretending to assert the divine rights of episcopacy, they laboured to deprive of that pre-eminence in the Anglican synod which the ecclesiastical constitution of the kingdom had bestowed on them.[3] None

[1] The first authority I have observed for this pretension is an address of the house of lords, Nov. 19. 1675, to the throne, for the frequent meeting of the convocation, and that they do make to the king such representations as may be for the safety of the religion established. Lords' Journals. This address was renewed Feb. 22. 1677. But what took place in consequence I am not apprised. It shows, however, some degree of dissatisfaction on the part of the bishops, who must be presumed to have set forward these addresses, at the virtual annihilation of their synod, which naturally followed from its relinquishment of self-taxation.

[2] Kennet, 799. 842. Burnet, 280. This assembly had been suffered to sit, probably, in consequence of the tory maxims which the ministry of that year professed.

[3] Wilkins's Concilia, iv. Burnet, passim. Boyer's Life of Queen Anne, 225. Somerville, 124.

was more prominent in their debates than Atterbury himself, whom, in the zenith of tory influence, at the close of her reign, the queen reluctantly promoted to the see of Rochester.

The new government at first permitted the convocation to hold its sittings. But they soon excited a flame which consumed themselves by an attack on Hoadley, bishop of Bangor, who had preached a sermon abounding with those principles concerning religious liberty, of which he had long been the courageous and powerful assertor.[1] The lower house of convocation thought fit to denounce, through the report of a committee, the dangerous tenets of this discourse, and of a work not long before published by the bishop. A long and celebrated war of pens instantly commenced, known by the name of the Bangorian controversy; managed, perhaps on both sides, with all the chicanery of polemical writers, and disgusting both from its tediousness, and from the manifest unwillingness of the disputants to speak ingenuously what they meant.[2] But, as the principles of Hoadley and his advocates appeared, in the main, little else than those of protestantism and toleration, the sentence of the laity, in the temper that was then gaining ground as to ecclesiastical subjects, was soon pronounced in their favour; and the high-church party discredited themselves by an opposition to what now pass for the incontrovertible truisms of religious liberty. In the ferment of that age, it was expedient for the state to scatter a little dust over the angry insects; the convocation was accordingly prorogued in 1717, and has never again sat for any business. (Tindal, 539.) Those who are imbued with high notions of sacerdotal power have sometimes deplored this extinction of the Anglican great council; and though its necessity, as I have already observed, cannot possibly be defended as an ancient part of the constitution, there are not wanting specious arguments for the expediency of such a synod. It might be urged that the church, considered only as an integral member of the commonwealth, and the greatest corporation within it, might justly claim that right of managing its own affairs which belongs to every other association; that the argument from abuse is not suffi-

[1] The lower house of convocation, in the late reign, among their other vagaries, had requested "that some synodical notice might be taken of the dishonour done to the church by a sermon preached by Mr. Benjamin Hoadley, at St. Lawrence, Jewry, Sept. 29. 1705, containing positions contrary to the doctrine of the church, expressed in the first and second parts in the homily against disobedience and wilful rebellion." Wilkins, iv. 634.

[2] These qualities are so apparent, that after turning over some forty or fifty tracts, and consuming a good many hours on the Bangorian controversy, I should find some difficulty in stating with precision the propositions in dispute. It is however evident that a dislike, not perhaps exactly to the house of Brunswic, but to the tenor of George I.'s administration, and to Hoadley himself, as an eminent advocate for it, who had been rewarded accordingly, was at the bottom a leading motive with most of the church party; some of whom, such as Hare, though originally of a whig connexion, might have had disappointments to exasperate them.

There was nothing whatever in Hoadley's sermon injurious to the established endowments and privileges, nor to the discipline and government, of the English church, even in theory. If this had been the case, he might be reproached with some inconsistency in becoming so large a partaker of her honours and emoluments. He even admitted the usefulness of censures for open immoralities, though denying all church authority to oblige any one to external communion, or to pass any sentence which should determine the condition of men with respect to the favour or displeasure of God. Hoadley's Works, ii. 465. 493. Another great question in this controversy was that of religious liberty, as a civil right, which the convocation explicitly denied. And another related to the much debated exercise of private judgment in religion, which, as one party meant virtually to take away, so the other perhaps unreasonably exaggerated. Some other disputes arose in the course of the combat, particularly the delicate problem of the value of sincerity as a plea for material errors.

cient, and is rejected with indignation when applied, as historically it might be, to representative governments and to civil liberty; that in the present state of things, no reformation even of secondary importance can be effected without difficulty, nor any looked for in greater matters, both from the indifference of the legislature, and the reluctance of the clergy to admit its interposition.

It is answered to these suggestions, that we must take experience when we possess it, rather than analogy, for our guide; that ecclesiastical assemblies have, in all ages and countries, been mischievous, where they have been powerful, which that of our wealthy and numerous clergy must always be; that if, however, the convocation could be brought under the management of the state (which by the nature of its component parts might seem not unlikely), it must lead to the promotion of servile men, and the exclusion of merit still more than at present; that the severe remark of Clarendon, who observes that of all mankind none form so bad an estimate of human affairs as churchmen, is abundantly confirmed by experience; that the representation of the church in the house of lords is sufficient for the protection of its interests; that the clergy have an influence which no other corporation enjoys over the bulk of the nation, and are apt to abuse it for the purposes of undue ascendancy, unjust restraint, or factious ambition; that the hope of any real good in reformation of the church by its own assemblies, to whatever sort of reform we may look, is utterly chimerical; finally, that as the laws now stand, which few would incline to alter, the ratification of parliament must be indispensable for any material change. It seems to admit of no doubt that these reasonings ought much to outweigh those on the opposite side.

In the last four years of the queen's reign, some inroads had been made on the toleration granted to dissenters, whom the high-church party held in abhorrence. They had for a long time inveighed against what was called occasional conformity, or the compliance of dissenters with the provisions of the test act in order merely to qualify themselves for holding office or entering into corporations. Nothing could, in the eyes of sensible men, be more advantageous to the church, if a re-union of those who had separated from it were advantageous, than this practice. Admitting even that the motive was self-interested, has an established government, in church or state, any better ally than the self-interestedness of mankind? Was it not what a presbyterian or independent minister would denounce as a base and worldly sacrifice? and if so, was not the interest of the Anglican clergy exactly in an inverse proportion to this? Any one competent to judge of human affairs would predict, what has turned out to be the case, that when the barrier was once taken down for the sake of convenience, it would not be raised again for conscience; that the most latitudinarian theory, the most lukewarm dispositions in religion, must be prodigiously favourable to the reigning sect; and that the dissenting clergy, though they might retain, or even extend their influence over the multitude, would gradually lose it with those classes who could be affected by the test. But, even if the tory faction had been cool-headed enough for such reflections, it has, unfortunately, been sometimes less the aim of the clergy to reconcile those who differ from them than to keep them in a state of

dishonour and depression. Hence, in the first parliament of Anne, a bill to prevent occasional conformity more than once passed the commons; and on its being rejected by the lords, a great majority of William's bishops voting against the measure, it was sent up again in a very reprehensible manner, tacked, as it was called, to a grant of money; so that, according to the pretension of the commons in respect to such bills, the upper house must either refuse the supply, or consent to what they disapproved. (Parl. Hist. vi. 362.) This however having miscarried, and the next parliament being of better principles, nothing farther was done till 1711, when lord Nottingham, a vehement high-churchman, having united with the whigs against the treaty of peace, they were injudicious enough to gratify him by concurring in a bill to prevent occasional conformity. (10 Anne, c. 2.) This was followed up by the ministry in a more decisive attack on the toleration, an act for preventing the growth of schism, which extended and confirmed one of Charles II., enforcing on all schoolmasters, and even on all teachers in private families, a declaration of conformity to the established church, to be made before the bishop, from whom a licence for exercising that profession was also to be obtained.[1] It is impossible to doubt for an instant, that if the queen's life had preserved the tory government for a few years, every vestige of the toleration would have been effaced.

These statutes, records of their adversaries' power, the whigs, now lords of the ascendant, determined to abrogate. The dissenters were unanimously zealous for the house of Hanover and for the ministry; the church of very doubtful loyalty to the crown, and still less affection to the whig name. In the session of 1719, accordingly, the act against occasional conformity, and that restraining education, were repealed.[2] It had been the intention to have also repealed the test act; but the disunion then prevailing among the whigs had caused so formidable an opposition even to the former measures, that it was found necessary to abandon that project. Walpole, more cautious and moderate than the ministry of 1719, perceived the advantage of reconciling the church as far as possible to the royal family and to his own government; and it seems to have been an article in the tacit compromise with the bishops, who were not backward in exerting their influence for the crown, that he should make no attempt to abrogate the laws which gave a monopoly of power to the Anglican communion. We may presume also that the prelates undertook not to obstruct the acts of indemnity passed from time to time in favour of those who had not duly qualified themselves for the offices they held; and which, after some time becoming regular, have in effect thrown open the gates to protestant dissenters, though still subject to be closed by either house of parliament, if any

[1] 12 Anne, c. 7. Parl. Hist. vi. 1349. The schism act, according to Lockhart, was promoted by Bolingbroke, in order to gratify the high tories, and to put lord Oxford under the necessity of declaring himself one way or other. "Though the earl of Oxford voted for it himself, he concurred with those who endeavoured to restrain some parts which they reckoned too severe; and his friends in both houses, particularly his brother auditor Harley, spoke and voted against it very earnestly." P. 462.

[2] 6 Geo. I. c. 4.. The whigs out of power, among whom was Walpole, factiously and inconsistently opposed the repeal of the schism act so that it passed with much difficulty. Parl. Hist. vii. 569.

jealousies should induce them to refuse their assent to this annual enactment.[1]

Meanwhile the principles of religious liberty, in all senses of the word, gained strength by this eager controversy, naturally pleasing as they are to the proud independence of the English character, and congenial to those of civil freedom, which both parties, tory as much as whig, had now learned sedulously to maintain. The non-juring and high-church factions among the clergy produced few eminent men; and lost credit, not more by the folly of their notions than by their general want of scholarship and disregard of their duties. The university of Oxford was tainted to the core with Jacobite prejudices; but it must be added that it never stood so low in respectability as a place of education.[2] The government, on the other hand, was studious to promote distinguished men; and doubtless the hierarchy in the first sixty years of the eighteenth century might very advantageously be compared, in point of conspicuous ability, with that of an equal period that ensued. The maxims of persecution were silently abandoned, as well as its practice; Warburton, and others of less name, taught those of toleration with as much boldness as Hoadley, but without some of his more invidious tenets; the more popular writers took a liberal tone; the names of Locke and Montesquieu acquired immense authority; the courts of justice discountenanced any endeavour to revive oppressive statutes; and, not long after the end of George the Second's reign, it was adjudged in the house of lords, upon the broadest principles of toleration laid down by lord Mansfield, that nonconformity with the established church is recognised by the law, and not an offence at which it connives.

Atterbury, bishop of Rochester, the most distinguished of the party denominated high-church, became the victim of his restless character and implacable disaffection to the house of Hanover. The pretended king, for some years after his competitor's accession, had fair hopes from different powers of Europe,—France, Sweden, Russia, Spain,

[1] The first act of this kind appears to have been in 1727. 1 Geo. II. c. 23. It was repeated next year, intermitted the next, and afterwards renewed in every year of that reign except the fifth, the seventeenth, the twenty-second, the twenty-third, the twenty-sixth, and the thirtieth. Whether these occasional interruptions were intended to prevent the nonconformists from relying upon it, or were caused by some accidental circumstance, must be left to conjecture. I believe that the renewal has been regular every year since the accession of George III.

[2] We find in Gutch's Collectanea Curiosa, vol. i. p. 53., a plan, ascribed to lord chancellor Macclesfield, for taking away the election of heads of colleges from the fellows, and vesting the nomination in the great officers of state, in order to cure the disaffection and want of discipline which was justly complained of. This remedy would have been perhaps the substitution of a permanent for a temporary evil. It appears also that archbishop Wake wanted to have had a bill, in 1716, for asserting the royal supremacy, and better regulating the clergy of the two universities (Coke's Walpole, ii. 122.); but I do not know that the precise nature of this is anywhere mentioned. I can scarcely quote Amherst's Terræ Filius as authority; it is a very clever, though rather libellous, invective against the university of Oxford at that time; but from internal evidence, as well as the confirmation which better authorities afford it, I have no doubt that it contains much truth.

Those who have looked much at the ephemeral literature of these two reigns must be aware of many publications fixing the charge of prevalent disaffection on this university, down to the death of George II.; and Dr. King, the famous Jacobite master of St. Mary Hall, admits that some were left to reproach him for apostasy in going to court on the accession of the late king in 1760. The general reader will remember the Isis by Mason, and the Triumph of Isis by Warton; the one a severe invective, the other an indignant vindication: but in this instance notwithstanding the advantages which satire is supposed to have over panegyric, we must award the laurel to the worse cause, and, what is more extraordinary, to the worse poet.

Austria,—(each of whom, in its turn, was ready to make use of this instrument,) and from the powerful faction who panted for his restoration. This was unquestionably very numerous; though we have not as yet the means of fixing with certainty on more than comparatively a small number of names. But a conspiracy for an invasion from Spain and a simultaneous rising was detected in 1722, which implicated three or four peers, and among them the bishop of Rochester.[1] The evidence, however, though tolerably convincing, being insufficient for a conviction by process at law, it was thought expedient to pass a bill of pains and penalties against this prelate, as well as others against two of his accomplices. The proof, besides many corroborating circumstances, consisted in three letters relative to the conspiracy, supposed to be written by his secretary Kelly, and appearing to dictated by the bishop. He was deprived of his see, and banished the kingdom for life.[2] This met with strong opposition, not limited to the enemies of the royal family, and is open to the same objection as the attainder of sir John Fenwick; the danger of setting aside those precious securities against a wicked government which the law of treason has furnished. As a vigorous assertion of the state's authority over the church we may commend the policy of Atterbury's deprivation; but perhaps this was ill purchased by a mischievous precedent. It is however the last act of a violent nature in any important matter, which can be charged against the English legislature.

No extensive conspiracy of the Jacobite faction seems ever to have been in agitation after the fall of Atterbury. The Pretender had his emissaries perpetually alert; and it is understood that an enormous mass of letters from his English friends is in existence;[3] but very few had the courage, or rather folly, to plunge into so desperate a course as rebellion. Walpole's prudent and vigilant administration, without transgressing the boundaries of that free constitution for which alone the house of Brunswic had been preferred, kept in check the disaffected.

[1] Layer, who suffered on account of this plot, had accused several peers, among others lord Cowper, who complained to the house of the publication of his name; and indeed, though he was at that time strongly in opposition to the court, the charge seems wholly incredible. Lord Strafford however was probably guilty; lords North and Orrery certainly so. Parl. Hist. viii. 203. There is even ground to suspect that Sunderland, to use Tindal's words, "in the latter part of his life had entered into correspondencies and designs which would have been fatal to himself or to the public." P. 657. This is mentioned by Coxe, i. 165.; and certainly confirmed by Lockhart, ii. 68. 70. But the reader will hardly give credit to such a story as Horace Walpole has told, that he coolly consulted sir Robert, his political rival, as to the part they should take on the king's death. Lord Orford's Works, iv. 287.

[2] State Trials, xvi. 324. Parl. Hist. viii. 195. et post. Most of the bishops voted against their restless brother; and Willis, bishop of Salisbury, made a very good but rather too acrimonious a speech on the bill. Id. 298. Hoadley, who was no orator, published two letters in the newspaper, signed Britannicus, in answer to Atterbury's defence; which, after all that had passed, he might better have spared. Atterbury's own speech is certainly below his fame, especially the peroration. Id. 267.

No one, I presume, will affect to doubt the reality of Atterbury's connexions with the Stuart family, either before his attainder or during his exile. The proofs of the latter were published by lord Hailes in 1768, and may be found also in Nicholls's edition of Atterbury's Correspondence, i. 148. Additional evidence is furnished by the Lockhart papers, vol. ii. passim.

[3] The Stuart papers obtained lately from Rome, and now in his majesty's possession, are said to furnish copious evidence of the Jacobite intrigues, and to affect some persons not hitherto suspected. We have reason to hope that they will not be long withheld from the public, every motive for concealment being wholly at an end.

It is said that there were not less than fifty Jacobites in the parliament of 1728. Coxe, ii. 204.

He wisely sought the friendship of cardinal Fleury, aware that no other power in Europe than France could effectually assist the banished family. After his own fall and the death of Fleury, new combinations of foreign policy arose; his successors returned to the Austrian connexion; a war with France broke out; the grandson of James II. became master, for a moment, of Scotland, and even advanced to the centre of this peaceful and unprotected kingdom. But this was hardly more ignominious to the government than to the Jacobites themselves; none of them joined the standard of their pretended sovereign; and the rebellion of 1745 was conclusive, by its own temporary success, against the possibility of his restoration.[1] From this time the government, even when in search of pretexts for alarm, could hardly affect to dread a name grown so contemptible as that of the Stuart party. It survived however for the rest of the reign of George II. in those magnanimous compotations, which had always been the only evidence of its courage and fidelity.

Though the Jacobite party had set before its eyes an object most dangerous to the public tranquillity, and which, could it have been attained, would have brought on again the contention of the seventeenth century; though in taking oaths to a government against which they were in conspiracy, they showed a systematic disregard of obligation, and were as little mindful of allegiance, in the years 1715 and 1745, to the prince they owned in their hearts, as they had been to him whom they professed to acknowledge, it ought to be admitted that they were rendered more numerous and formidable than was necessary by the faults of the reigning kings or of their ministers. They were not actuated for the most part (perhaps with very few exceptions) by the slavish principles of indefeasible right, much less by those of despotic power. They had been so long in opposition to the court, they had so often spoken the language of liberty, that we may justly believe them to have been its friends. It was the policy of Walpole to keep alive the strongest prejudice in the mind of George II., obstinately retentive of prejudice, as such narrow and passionate minds always are, against the whole body of the tories. They were ill received at court, and generally excluded, not only from those departments of office which the dominant party have a right to keep in their power, but from the commission of the peace, and every other subordinate trust.[2] This

[1] The tories, it is observed in the MS. journal of Mr. Yorke (second earl of Hardwicke), showed no sign of affection to the government at the time when the invasion was expected in 1743, but treated it all with indifference. Parl. Hist. xiii. 668. In fact a disgraceful apathy pervaded the nation; and according to a letter from Mr. Fox to Mr. Winnington in 1745, which I only quote from recollection, it seemed perfectly uncertain, from this general passiveness, whether the revolution might not be suddenly brought about. Yet very few comparatively, I am persuaded, had the slightest attachment or prejudice in favour of the house of Stuart; but the continual absence from England, and the Hanoverian predilections of the two Georges, the feebleness and facetiousness of their administration, and of public men in general, and an indefinite opinion of misgovernment, raised through the press, though certainly without oppression or arbitrary acts, had gradually alienated the mass of the nation. But this would not lead men to expose their lives and fortunes; and hence the people of England, a thing almost incredible, lay quiet and nearly unconcerned, while the little army of Highlanders came every day nearer to the capital. It is absurd, however, to suppose that they could have been really successful by marching onward; though their defeat might have been more glorious at Finchley than at Culloden.

[2] See Parl. Hist. xiii. 1244; and other proofs might be brought from the same work, as well as from miscellaneous authorities of the age of George II.

illiberal and selfish course retained many, no doubt, in the Pretender's camp, who must have perceived both the improbability of his restoration, and the difficulty of reconciling it with the safety of our constitution. He was indeed, as well as his son, far less worthy of respect than the contemporary Brunswic kings: without absolutely wanting capacity or courage, he gave the most undeniable evidence of his legitimacy by constantly resisting the counsels of wise men, and yielding to those of priests; while his son, the fugitive of Culloden, despised and deserted by his own party, insulted by the court of France, lost with the advance of years even the respect and compassion which wait on unceasing misfortune, the last sad inheritance of the house of Stuart.[1] But they were little known in England, and from unknown princes men are prone to hope much: if some could anticipate a redress of every evil from Frederic Prince of Wales, whom they might discover to be destitute of respectable qualities, it cannot be wondered at that others might draw equally flattering prognostics from the accession of Charles Edward. It is almost certain that if either the claimant or his son had embraced the protestant religion, and had also manifested any superior strength of mind, the German prejudices of the reigning family would have cost them the throne, as they did the people's affections. Jacobitism, in the great majority, was one modification of the spirit of liberty burning strongly in the nation at this period. It gave a rallying point

[1] See in the Lockhart Papers, ii. 565., a curious relation of Charles Edward's behaviour in refusing to quit France after the peace of Aix-la-Chapelle. It was so insolent and absurd that the government was provoked to arrest him at the opera, and literally to order him to be bound hand and foot; an outrage which even his preposterous conduct could hardly excuse.

Dr. King was in correspondence with this prince for some years after the latter's foolish, though courageous, visit to London in September, 1750; which he left again in five days, on finding himself deceived by some sanguine friends. King says he was wholly ignorant of our history and constitution. "I never heard him express any noble or benevolent sentiment, the certain indications of a great soul and good heart; or discover any sorrow or compassion for the misfortunes of so many worthy men who had suffered in his cause." Anecdotes of his own Times, p. 201. He goes on to charge him with love of money and other faults. But his great folly in keeping a mistress, Mrs. Walkinshaw, whose sister was housekeeper at Leicester house, alarmed the Jacobites. "These were all men of fortune and distinction, and many of them persons of the first quality, who attached themselves to the P. as to a person who they imagined might be made the instrument of saving their country. They were sensible that by Walpole's administration the English government was become a system of corruption; and that Walpole's successors, who pursued his plan without any of his abilities, had reduced us to such a deplorable situation that our commercial interest was sinking, our colonies in danger of being lost, and Great Britain, which, if her powers were properly exerted, as they were afterwards in Mr. Pitt's administration, was able to give laws to other nations, was become the contempt of all Europe." P. 208. This is in truth the secret of Jacobitism. But possibly that party were not sorry to find a pretext for breaking off so hopeless a connexion, which they seem to have done about 1755. Mr. Pitt's great successes reconciled them to the administration; and his liberal conduct brought back those who had been disgusted by an exclusive policy. On the accession of a new king they flocked to St. James's; and probably scarcely one person of the rank of a gentleman, south of the Tweed, was found to dispute the right of the house of Brunswic after 1760. Dr. King himself, it may be observed, laughs at the old passive obedience doctrine (page 193.); so far was he from being a Jacobite of that school.

A few non-juring congregations lingered on far into the reign of George III., presided over by the successors of some bishops whom Lloyd of Norwich, the last of those deprived at the revolution, had consecrated in order to keep up the schism. A list of these is given in D'Oyly's Life of Sancroft, vol. ii. p. 34., whence it would appear that the last of them died in 1779. I can trace the line a little farther: a bishop of that separation, named Cartwright, resided at Shrewsbury in 1793, carrying on the business of a surgeon. State Trials, xxiii. 1073. I have heard of similar congregations in the west of England still later. He had become however a very loyal subject to king George: a singular proof of that tenacity of life by which religious sects, after dwindling down through neglect, excel frogs and tortoises; and that even when they have become almost equally cold-blooded!

to that indefinite discontent, which is excited by an ill opinion of rulers, and to that disinterested, though ignorant patriotism which boils up in youthful minds. The government in possession was hated, not as usurped, but as corrupt; the banished line was demanded, not so much because it was legitimate, but because it was the fancied means of redressing grievances and regenerating the constitution. Such notions were doubtless absurd; but it is undeniable that they were common, and had been so almost from the revolution. I speak only, it will be observed, of the English Jacobites; in Scotland the sentiments of loyalty and national pride had a vital energy, and the Highland chieftains gave their blood, as freely as their southern allies did their wine, for the cause of their ancient kings.

No one can have looked in the most cursory manner at the political writings of these two reigns, or at the debates of parliament, without being struck by the continual predictions that our liberties were on the point of extinguishment, or at least by apprehensions of their being endangered. It might seem that little or nothing had been gained by the revolution, and the substitution of an elective dynasty. This doubtless it was the interest of the Stuart party to maintain or insinuate; and in the conflict of factions, those who, with far opposite views, had separated from the court, seemed to lend them aid. The declamatory exaggerations of that able and ambitious body of men who co-operated against the ministry of sir Robert Walpole have long been rejected; and perhaps in the usual reflux of popular opinion, his domestic administration (for in foreign policy his views, so far as he was permitted to act upon them, appear to have been uniformly judicious,) has obtained of late rather an undue degree of favour. I have already observed that, for the sake of his own ascendency in the cabinet, he kept up unnecessarily the distinctions of the whig and tory parties, and thus impaired the stability of the royal house, which it was his chief care to support. And, though his government was so far from anything oppressive or arbitrary that, considered either relatively to any former times, or to the extensive disaffection known to subsist, it was uncommonly moderate; yet, feeling or feigning alarm at the Jacobite intrigues on the one hand, at the democratic tone of public sentiment and of popular writings on the other, he laboured to preserve a more narrow and oligarchical spirit than was congenial to so great and brave a people, and trusted not enough, as indeed is the general fault of ministers, to the sway of good sense and honesty over disinterested minds. But, as he never had a complete influence over his master, and knew that those who opposed him had little else in view than to seize the reins of power and manage them worse, his deviations from the straight course are more pardonable.

The clamorous invectives of this opposition, combined with the subsequent dereliction of avowed principles by many among them when in power, contributed more than anything else in our history to cast obloquy and suspicion, or even ridicule, on the name and occupation of patriots. Men of sordid and venal character always rejoice to generalise so convenient a maxim as the non-existence of public virtue. It may not however be improbable, that many of those who took a part in this long contention, were less insincere than it has been the fashion

to believe, though led too far at the moment by their own passions, as well as by the necessity of colouring highly a picture meant for the multitude, and reduced afterwards to the usual compromises and concessions, without which power in this country is ever unattainable. But waving a topic too generally historical for the present chapter, it will be worth while to consider what sort of ground there might be for some prevalent subjects of declamation; and whether the power of government had not, in several respects, been a good deal enhanced since the beginning of the century. By the power of government I mean not so much the personal authority of the sovereign as that of his ministers, acting perhaps without his directions; which, since the reign of William, is to be distinguished, if we look at it analytically, from the monarchy itself.

I. The most striking acquisition of power by the crown in the new model of government, if I may use such an expression, is the permanence of a regular military force. The reader cannot need to be reminded that no army existed before the civil war, that the guards in the reign of Charles II. were about 5000 men, that in the breathing-time between the peace of Ryswick and the war of the Spanish succession, the commons could not be brought to keep up more than 7000 troops. Nothing could be more repugnant to the national prejudices than a standing army. The tories, partly from regard to the ancient usage of the constitution, partly, no doubt, from a factious or disaffected spirit, were unanimous in protesting against it. The most disinterested and zealous lovers of liberty came with great suspicion and reluctance into what seemed so perilous an innovation. But the court, after the accession of the house of Hanover, had many reasons for insisting upon so great an augmentation of its power and security. It is remarkable to perceive by what stealthy advances this came on. Two long wars had rendered the army a profession for men in the higher and middling classes, and familiarised the nation to their dress and rank; it had achieved great honour for itself and the English name; and in the nature of mankind the patriotism of glory is too often an overmatch for that of liberty. The two kings were fond of warlike policy, the second of war itself; their schemes, and those of their ministers, demanded an imposing attitude in negotiation, which an army, it was thought, could best give; the cabinet was for many years entangled in alliances, shifting sometimes rapidly, but in each combination liable to produce the interruption of peace. In the new system which rendered the houses of parliament partakers in the executive administration, they were drawn themselves into the approbation of every successive measure, either on the propositions of ministers, or, as often happens more indirectly, but hardly less effectually, by passing a negative on those of their opponents. The number of troops for which a vote was annually demanded, after some variations, in the first years of George I., was, during the whole administration of sir Robert Walpole, except when the state of Europe excited some apprehension of disturbance, rather more than 17,000 men, independent of those on the Irish establishment, but including the garrisons of Minorca and Gibraltar. And this continued with little alteration to be our standing army in time of peace during the eighteenth century.

This army was always understood to be kept on foot, as it is still expressed in the preamble of every mutiny-bill, for better preserving the balance of power in Europe. The commons would not for an instant admit that it was necessary as a permanent force, in order to maintain the government at home. There can be no question however that the court saw its advantage in this light; and I am not perfectly sure that some of the multiplied negotiations on the continent in that age were not intended as a pretext for keeping up the army, or at least as a means of exciting alarm for the security of the established government. In fact, there would have been rebellions in the time of George I., not only in Scotland, which perhaps could not otherwise have been preserved, but in many parts of the kingdom, had the parliament adhered with too pertinacious bigotry to their ancient maxims. Yet these had such influence that it was long before the army was admitted by every one to be perpetual; and I do not know that it has ever been recognised as such in our statutes. Mr. Pulteney, so late as 1732, a man neither disaffected nor democratical, and whose views extended no farther than a change of hands, declared that he "always had been, and always would be, against a standing army of any kind; it was to him a terrible thing, whether under the denomination of parliamentary or any other. A standing army is still a standing army, whatever name it be called by; they are a body of men distinct from the body of the people; they are governed by different laws; blind obedience and an entire submission to the orders of their commanding officer is their only principle. The nations around us are already enslaved, and have been enslaved by those very means; by means of their standing armies they have every one lost their liberties; it is indeed impossible that the liberties of the people can be preserved in any country where a numerous standing army is kept up." (Parl. Hist. viii. 904.)

This wholesome jealousy, though it did not prevent what was indeed for many reasons not to be dispensed with, the establishment of a regular force, kept it within bounds which possibly the administration, if left to itself, would have gladly overleaped. A clause in the mutiny-bill, first inserted in 1718, enabling courts martial to punish mutiny and desertion with death, which had hitherto been only cognisable as capital offences by the civil magistrate, was carried by a very small majority in both houses. (Id. vii. 536.) An act was passed in 1735, directing that no troops should come within two miles of any place, except the capital or a garrisoned town, during an election (8 Geo. II. c. 30. Parl. Hist. viii. 883.); and on some occasions, both the commons and the courts of justice showed that they had not forgotten the maxims of their ancestors as to the supremacy of the civil power.[1] A more important measure was projected by men of independent principles, at once to secure the kingdom against attack, invaded as it had been by

[1] The military having been called in to quell an alleged riot at Westminster election in 1741, it was resolved, Dec. 22nd "that the presence of a regular body of armed soldiers at an election of members to serve in parliament is a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom." The persons concerned in this having been ordered to attend the house, received on their knees a very severe reprimand from the speaker. Parl. Hist. ix. 326. Upon some occasion, the circumstances of which I do not recollect, chief-justice Willes uttered some laudable sentiments as to the subordination of military power.

rebels in 1745, and thrown into the most ignominious panic on the rumours of a French armament in 1756, to take away the pretext for a large standing force, and perhaps to furnish a guarantee against any evil purposes to which in future times it might be subservient, by the establishment of a national militia, under the sole authority, indeed, of the crown, but commanded by gentlemen of sufficient estates, and not liable, except in war, to be marched out of its proper county. This favourite plan, with some reluctance on the part of the government, was adopted in 1757.[1] But though, during the long periods of hostilities which have unfortunately ensued, this embodied force has doubtless placed the kingdom in a more respectable state of security, it has not much contributed to diminish the number of our regular forces; and, from some defects in its constitution, arising out of too great attention to our ancient local divisions, and of too indiscriminate a dispensation with personal service, which has filled the ranks with the refuse of the community, the militia has grown unpopular and burthensome, rather considered of late by the government as a means of recruiting the army than as worthy of preservation in itself, and accordingly thrown aside in time of peace; so that the person who acquired great popularity as the author of this institution, lived to see it worn out and gone to decay, and the principles, above all, upon which he had brought it forward, just enough remembered to be turned into ridicule. Yet the success of that magnificent organization which, in our own time, has been established in France, is sufficient to evince the possibility of a national militia; and we know with what spirit such a force was kept up for some years in this country, under the name of volunteers and yeomanry, on its only real basis, that of property, and in such local distribution as convenience pointed out.

Nothing could be more idle, at any time since the revolution, than to suppose that the regular army would pull the speaker out of his chair, or in any manner be employed to confirm a despotic power in the crown. Such power, I think, could never have been the waking dream of either king or minister. But as the slightest inroads upon private rights and liberties are to be guarded against in any nation that deserves to be called free, we should always keep in mind not only that the military power is subordinate to the civil, but as this subordination must cease where the former is frequently employed, that it should never be called upon in aid of the peace without sufficient cause. Nothing would more break down this notion of the law's supremacy than the perpetual interference of those who are really governed by another law; for the doctrine of some judges, that the soldier, being still a citizen, acts only in preservation of the public peace, as another citizen is bound to do, must be felt as a sophism, even by those who cannot find an answer to it. And, even in slight circumstances, it is not conformable to the principles of our government to make that vain display of military authority which disgusts us so much in some continental kingdoms. But, not to dwell on this, it is more to our immediate purpose, that the executive power has acquired such a coadjutor in the

[1] Lord Hardwicke threw out the militia bill in 1756, thinking some of its clauses rather too republican, and, in fact, being adverse to the scheme. Parl. Hist. xv. 704. H. Walpole's Memoirs, ii. 45. Coxe's Memoirs of Lord Walpole, 459.

regular army that it can, in no probable emergency, have much to apprehend from popular sedition. The increased facilities of transport, and several improvements in military art and science, which will occur to the reader, have in later times greatly enhanced this advantage.

II. It must be apparent to every one that since the restoration, and especially since the revolution, an immense power has been thrown into the scale of both houses of parliament, though practically in more frequent exercise by the lower, in consequence of their annual session during several months, and of their almost unlimited rights of investigation, discussion, and advice. But, if the crown should by any means become secure of an ascendency in this assembly, it is evident that, although the prerogative, technically speaking, might be diminished, the power might be the same, or even possibly more efficacious; and that this result must be proportioned to the degree and security of such an ascendency. A parliament absolutely, and in all conceivable circumstances, under the control of the sovereign, whether through intimidation or corrupt subservience, could not, without absurdity, be deemed a co-ordinate power, or, indeed, in any sense, a restraint upon his will. This is, however, an extreme supposition, which no man, unless both grossly factious and ignorant, will ever pretend to have been realised. But, as it would equally contradict notorious truth to assert that every vote has been disinterested and independent, the degree of influence which ought to be permitted, or which has at any time existed, becomes one of the most important subjects in our constitutional policy.

I have mentioned in the last chapter both the provisions inserted in the act of settlement, with the design of excluding altogether the possessors of public office from the house of commons, and the modifications of them by several acts of the queen. These were deemed by the country party so inadequate to restrain the dependents of power from overspreading the benches of the commons that perpetual attempts were made to carry the exclusive principle to a far greater length. In the next two reigns, if we can trust to the uncontradicted language of debate, or even to the descriptions of individuals in the lists of each parliament, we must conclude that a very undue proportion of dependents on the favour of government were made its censors and counsellors. There was still, however, so much left of an independent spirit, that bills for restricting the number of placemen, or excluding pensioners, met always with countenance; they were sometimes rejected by very slight majorities; and, after a time, sir Robert Walpole found it expedient to reserve his opposition for the surer field of the other house.[1] After his fall, it was reputed with some justice to his successors, that they shrunk in power from the bold reformation which they had so frequently endeavoured; the king was indignantly averse

[1] By the act of 6 Anne, c. 7. all persons holding pensions from the crown during pleasure were made incapable of sitting in the house of commons; which was extended by 1 Geo. I. c. 56., to those who held them for any term of years. But the difficulty was to ascertain the fact; the government refusing information. Mr. Sandys accordingly proposed a bill in 1730, by which every member of the commons was to take an oath that he did not hold any such pension, and that, in case of accepting one, he would disclose it to the house within fourteen days. This was carried by a small majority through the commons, but rejected in the other house; which happened again in 1734 and in 1740. Parl. Hist. viii. 789.; ix. 369.; xi. 510. The king, in an angry note to lord Townshend, on the first occasion, calls it "this villanous bill."

to all retrenchment of his power, and they wanted probably both the inclination and the influence to cut off all corruption. Yet we owe to this ministry the place-bill of 1743, which, derided as it was at the time, seems to have had a considerable effect; excluding a great number of inferior officers from the house of commons, which has never since contained so revolting a list of court-deputies as it did in the age of Walpole.[1]

But while this acknowledged influence of lucrative office might be presumed to operate on many staunch adherents of the actual administration, there was always a strong suspicion, or rather a general certainty, of absolute corruption. The proofs in single instances could never perhaps be established; which, of course, is not surprising. But no one seriously called in question the reality of a systematic distribution of money by the crown to the representatives of the people; nor did the corrupters themselves, in whom the crime seems always to be deemed less heinous, disguise it in private.[2] It is true that the appropriation of supplies, and the established course of the exchequer, render the greatest part of the public revenue secure from misapplication; but, under the head of secret service money, a very large sum was annually expended without account, and some other parts of the civil list were equally free from all public examination.[3] The committee of secrecy appointed after the resignation of sir Robert Walpole endeavoured to elicit some distinct evidence of this misapplication; but the obscurity natural to such transactions, and the guilty collusion of subaltern accomplices, who shrouded themselves in the protection of the law, defeated every hope of punishment, or even personal disgrace.[4] This practice of direct bribery continued, beyond doubt, long afterwards, and is generally supposed to have ceased about the termination of the American war.

There is hardly any doctrine with respect to our government more in fashion, than that a considerable influence of the crown (meaning of

Coxe's Walpole, ii. 537. 673. A bill of the same gentleman to limit the number of placemen in the house had so far worse success, that it did not reach the Serbonian bog. Parl. Hist. xi. 328. Bishop Sherlock made a speech against the prevention of corrupt practices by the pension bill, which whether justly or not, excited much indignation, and even gave rise to the proposal of a bill for putting an end to the translation of bishops. Id. viii. 847.

[1] 25 Geo. II. c. 22. The king came very reluctantly into this measure: in the preceding session of 1742, Sandys, now become chancellor of the exchequer, had opposed it, though originally his own; alleging in no very parliamentary manner, that the new ministry had not yet been able to remove his majesty's prejudices. Parl. Hist. xii. 896.

[2] Mr. Fox declared to the duke of Newcastle, when the office of secretary of state, and what was called the management of the house of commons was offered to him, "that he never desired to touch a penny of the secret service money, or to know the disposition of it, farther than was necessary to *enable him to speak to the members without being ridiculous.*" Lyttelton's Diary, 15th Mar., 1754. H. Walpole confirms this in nearly the same words. Memoirs of Last Ten Years, i. 332.

[3] In Coxe's Mem. of Sir R. Walpole, iii. 609., we have the draught, by that minister, of an intended vindication of himself after his retirement from office, in order to show the impossibility of misapplying public money, which, however, he does not show; and his elaborate account of the method by which payments are made out of the exchequer, though valuable in some respects, seems rather intended to lead aside the unpractised reader.

[4] This secret committee were checked at every step for want of sufficient powers. It is absurd to assert, like Mr. Coxe, that they advanced accusations which they could not prove, when the means of proof were withheld. Scrope and Paxton, the one secretary, the other solicitor to the treasury, being examined about very large sums traced to their hands, and other matters, refused to answer questions, and a bill to indemnify evidence was lost in the upper house. Parl. Hist. xii. 625. et post.

course a corrupt influence) in both houses of parliament, and especially in the commons, has been rendered indispensable by the vast enhancement of their own power over the public administration. It is doubtless most expedient that many servants of the crown should be also servants of the people; and no man who values the constitution would separate the functions of ministers of state from those of legislators. The glory that waits on wisdom and eloquence in the senate, should always be the great prize of an English statesman, and his high road to the sovereign's favour. But the maxim that private vices are public benefits is as sophistical as it is disgusting; and it is self-evident, both that the expectation of a clandestine recompense, or what in effect is the same thing, of a lucrative office, cannot be the motive of an upright man in his vote, and that if an entire parliament should be composed of such venal spirits, there would be an end of all control upon the crown. There is no real cause to apprehend that a virtuous and enlightened government would find difficulty in resting upon the reputation justly due to it; especially when we throw into the scale that species of influence which must ever subsist, the sentiment of respect and loyalty to a sovereign, of friendship and gratitude to a minister, of habitual confidence in those intrusted with power, of averseness to confusion and untried change, which have in fact more extensive operation than any sordid motives, and which must almost always render them unnecessary.

III. The co-operation of both houses of parliament with the executive government enabled the latter to convert to its own purpose what had often in former times been employed against it, the power of inflicting punishment for breach of privilege. But as the subject of parliamentary privilege is of no slight importance, it will be convenient on this occasion to bring the whole before the reader in as concise a summary as possible, distinguishing the power, as it relates to offences committed by members of either house, or against them singly, or the houses of parliament collectively, or against the government and the public.

1. It has been the constant practice of the house of commons to repress disorderly or indecent behaviour by a censure delivered through the speaker. Instances of this are even noticed in the journals under Edward VI. and Mary; and it is in fact essential to the regular proceedings of any assembly. In the former reign they also committed one of their members to the Tower. But in the famous case of Arthur Hall in 1581, they established the first precedent of punishing one of their own body for a printed libel derogatory to them as a part of the legislature; and they inflicted the threefold penalty of imprisonment, fine, and expulsion. From this time forth it was understood to be the law and usage of parliament, that the commons might commit to prison any one of their members for misconduct in the house, or relating to it. The right of imposing a fine was very rarely asserted after the instance of Hall. But that of expulsion, no earlier precedent whereof has been recorded, became as indubitable as frequent and unquestioned usage could render it. It was carried to a great excess by the long parliament, and again in the year 1680. These, however, were times of extreme violence; and the prevailing faction had an apology in the

designs of the court, which required an energy beyond the law to counteract them. The offences too, which the whigs thus punished in 1680, were in their effect against the power and even existence of parliament. The privilege was far more unwarrantably exerted by the opposite party in 1714, against sir Richard Steele, expelled the house for writing The Crisis, a pamphlet reflecting on the ministry. This was, perhaps, the first instance wherein the house of commons so identified itself with the executive administration, independently of the sovereign's person, as to consider itself libelled by those who impugned its measures.[1]

In a few instances an attempt was made to carry this farther, by declaring the party incapable of sitting in parliament. It is hardly necessary to remark that upon this rested the celebrated question of the Middlesex election in 1769. If a few precedents, and those not before the year 1680, were to determine all controversies of constitutional law, it is plain enough from the journals that the house have assumed the power of incapacitation. But as such an authority is highly dangerous and unnecessary for any good purpose, and as, according to all legal rules, so extraordinary a power could not be supported except by a sort of prescription which cannot be shown, the final resolution of the house of commons, which condemned the votes passed in times of great excitement, appears far more consonant to just principles.

2. The power of each house of parliament over those who do not belong to it is of a more extensive consideration, and has lain open, in some respects, to more doubt than that over its own members. It has been exercised, in the first place, very frequently, and from an early period, in order to protect the members personally, and in their properties, from anything which has been construed to interfere with the discharge of their functions. Every obstruction in these duties, by assaulting, challenging, insulting any single representative of the commons, has from the middle of the sixteenth century downwards, that is, from the beginning of their regular journals, been justly deemed a breach of privilege, and an offence against the whole body. It has been punished generally by commitment, either to the custody of the house's officer, the serjeant-at-arms, or to the king's prison. This summary proceeding is usually defended by a technical analogy to what are called attachments for contempt, by which every court of record is entitled to punish by imprisonment, if not also by fine, any obstruction to its acts or contumacious resistance of them. But it tended also to raise the dignity of parliament in the eyes of the people, at times when the government, and even the courts of justice, were not greatly inclined to regard it; and has been also a necessary safeguard against the insolence of power. The majority are bound to respect, and indeed have respected, the rights of every member, however obnoxious to them, on all questions of privilege. Even in the case most likely to occur in the present age, that of libels, which by no unreasonable stretch come under the head of obstructions, it would be

[1] Parl. Hist. vi. 1265. Walpole says, in speaking for Steele, "the liberty of the press is unrestrained; how then shall a part of the legislature dare to punish that as a crime, which is not declared to be so by any law framed by the whole?"

unjust that a patriotic legislator, exposed to calumny for his zeal in the public cause, should be necessarily driven to a troublesome and uncertain process at law, when the offence so manifestly affects the real interests of parliament and the nation. The application of this principle must of course require a discreet temper, which was not perhaps always observed in former times, especially in the reign of William III. Instances at least of punishment for breach of privilege by personal reflections are never so common as in the journals of that turbulent period.

The most usual mode however of incurring the animadversion of the house was by molestations in regard to property. It was the most ancient privilege of the commons to be free from all legal process, during the term of the session and for forty days before and after, except on charges of treason, felony, or breach of the peace. I have elsewhere mentioned the great case of Ferrers, under Henry VIII., wherein the house first, as far as we know, exerted the power of committing to prison those who had been concerned in arresting one of its members; and have shown that, after some little intermission, this became their recognised and customary right. Numberless instances occur of its exercise. It was not only a breach of privilege to serve any sort of process upon them, but to put them under the necessity of seeking redress at law for any civil injury. Thus abundant cases are found in the journals, where persons have been committed to prison for entering on the estates of members, carrying away timber, lopping trees, digging coal, fishing in their waters. Their servants, and even their tenants, if the trespass were such as to affect the landlord's property, had the same protection.[1] The grievance of so unparalleled an immunity must have been notorious, since it not only deprived creditors of any possible redress, after sessions became annual, (and the prorogations were always managed with a regard to the limited term of privilege), but enabled rapacious men to establish unjust claims in respect of property; the alleged trespasses being generally founded on some disputed right. The house were finally roused to a sense of the iniquity they were sanctioning. On a complaint of breach of privilege by trespassing on a fishery (Jan. 25. 1768), they heard evidence on both sides, and determined that no breach of privilege had been committed; thus indirectly taking on them the decision of a freehold right. A few days after they came to a resolution, "that in case of any complaint of a breach of privilege, hereafter to be made by any member of this house, if the house shall adjudge there is no ground for such complaint, the house will order satisfaction to the person complained of for his costs and expenses incurred by reason of such complaint."[2] But little opportunity was given to try the effect of this resolution, an act having passed in two years afterwards, which has altogether taken away the exemption from legal process, except as to the immunity from personal

[1] The instances are so numerous, that to select a few would perhaps give an inadequate notion of the vast extension which privilege received. In fact, hardly anything could be done disagreeable to a member, of which he might not inform the house, and cause it to be punished.

[2] Journals, 11th Feb. It had been originally proposed, that the member making the complaint should pay the party's costs and expenses; which was amended, I presume, in consequence of some doubt as to the power of the house to enforce it.

arrest, which still continues to be the privilege of both houses of parliament. (10 G. III. c. 50.)

3. A more important class of offences against privilege is of such as affect either house of parliament collectively. In the reign of Elizabeth we have an instance of one committed for disrespectful words against the commons. A few others, either for words spoken or published libels, occur in the reign of Charles I. even before the long parliament; but those of 1641 can have little weight as precedents, and we may say nearly the same of the unjustifiable proceedings in 1680. Even since the revolution, we find too many proofs of encroaching pride or intemperate passion, to which a numerous assembly is always prone, and which the prevalent doctrine of the house's absolute power in matters of privilege has not contributed much to restrain. The most remarkable may be briefly noticed.

The commons of 1701, wherein a tory spirit was strongly predominant, by what were deemed its factious delays in voting supplies, and in seconding the measures of the king for the security of Europe, had exasperated all those who saw the nation's safety in vigorous preparations for war, and led at last to the most angry resolution of the lords which one house of parliament in a matter not affecting its privileges has ever recorded against the other.[1] The grand jury of Kent, and other freeholders of the county, presented accordingly a petition on the 8th of May, 1701, imploring them to turn their loyal addresses into bills of supply (the only phrase in the whole petition that could be construed into disrespect), and to enable his majesty to assist his allies before it should be too late. The tory faction was wrought to fury by this honest remonstrance. They voted that the petition was scandalous, insolent, and seditious, tending to destroy the constitution of parliament, and to subvert the established government of this realm; and ordered that Mr. Colepepper, who had been most forward in presenting the petition, and all others concerned in it, should be taken into custody of the serjeant.[2] Though no attempt was made on this occasion to call the authority of the house into question by habeas corpus or other legal remedy, it was discussed in pamphlets and in general conversation, with little advantage to a power so arbitrary, and so evidently abused in the immediate instance.[3]

[1] Resolved, That whatever ill consequences may arise from the so long deferring the supplies for the year's service are to be attributed to the fatal counsel of putting off the meeting of a parliament so long, and to unnecessary delays of the house of comm..ns. Lords' Journ. 23. June, 1701. The commons had previously come to a vote, that all the ill consequences which may at this time attend the delay of the supplies granted by the commons for the preserving the public peace, and maintaining the balance of Europe, are to be imputed to those who, to procure an indemnity for their own enormous crimes, have used their utmost endeavours to make a breach between the two houses. Commons' Journ., June 20.

[2] Journ. 8. May. Parl. Hist. v. 1250. Ralph, 947. This historian, who generally affects to take the popular side, inveighs against this petition, because the tories had a majority in the commons. His partiality arising out of a dislike to the king, is very manifest throughout the second volume. He is forced to admit afterwards, that the house disgusted the people by their votes on this occasion. P. 976.

[3] History of the Kentish Petition. Somers Tracts, xi. 242. Legion's Paper. Id. 264. Vindication of the Rights of the Commons (either by Harley or sir Humphrey Mackworth). Id. 276. This contains in many respects constitutional principles; but the author holds very strong language about the right of petitioning. After quoting the statute of Charles II. against tumults on pretence of presenting petitions, he says: "By this statute it may be observed, that not only the number of persons is restrained, but the occasion also for which they may petition; which is for the alteration of matters established in church or state, for want whereof some incon-

A very few years after this high exercise of authority, it was called forth in another case, still more remarkable and even less warrantable. The house of commons had an undoubted right of determining all disputed returns to the writ of election, and consequently of judging upon the right of every vote. But, as the house could not pretend that it had given this right, or that it was not, like any other franchise, vested in the possessor by a legal title, no pretext of reason or analogy could be set up for denying that it might also come, in an indirect manner at

venience may arise to that county from which the petition shall be brought. For it is plain by the express words and meaning of that statute that the grievance or matter of the petition must arise in the same county as the petition itself. They may indeed petition the king for a parliament to redress their grievances; and they may petition that parliament to make one law that is advantageous, and repeal another that is prejudicial to the trade or interest of that county; but they have no power by this statute, nor by the constitution of the English government, to direct the parliament in the general proceedings concerning the whole kingdom; for the law declares that a general consultation of all the wise representatives of parliament is more for the safety of England than the hasty advice of a number of petitioners of a private county, of a grand jury, or of a few justices of the peace, who seldom have a true state of the case represented to them." P. 313.

These are certainly what must appear in the present day very strange limitations of the subject's right to petition either house of parliament. But it is really true that such a right was not generally recognised, nor frequently exercised, in so large an extent as is now held unquestionable. We may search whole volumes of the journals, while the most animating topics were in discussion, without finding a single instance of such an interposition of the constituent with the representative body. In this particular case of the Kentish petition, the words in the resolution, that it tended to destroy the constitution of parliament and subvert the established government, could be founded on no pretence but its unusual interference with the counsels of the legislature. With this exception, I am not aware (stating this however with some diffidence) of any merely political petition before the Septennial bill in 1717, against which several were presented from corporate towns; one of which was rejected on account of language that the house thought indecent; and as to these it may be observed, that towns returning members to parliament had a particular concern in the measure before the house. They relate however, no doubt, to general policy, and seem to establish a popular principle which stood on little authority. I do not of course include the petitions to the long parliament in 1640, nor one addressed to the Convention, in 1689, from the inhabitants of London and Westminster, pressing their declaration of William and Mary; both in times too critical to furnish regular precedents. But as the popular principles of government grew more established, the right of petitioning on general grounds seems to have been better recognised; and instances may be found, during the administration of sir Robert Walpole, though still by no means frequent. Parl. Hist. xii. 119. The city of London presented a petition against the bill for naturalization of the Jews, in 1753, as being derogatory to the Christian religion as well as detrimental to trade. Id. xiv. 1417. It caused however some animadversion; for Mr. Northey, in the debate next session on the proposal to repeal this bill, alluding to this very petition, and to the comments Mr. Pelham made on it, as "so like the famous Kentish petition, that if they had been treated in the same manner it would have been what they deserved," observes in reply, that the "right of petitioning either the king or the parliament in a decent and submissive manner, and without any riotous appearance against anything they think may affect their religion and liberties, will never, I hope, be taken from the subject." Id. xv. 149.; see also 376. And it is very remarkable that notwithstanding the violent clamour excited by that unfortunate statute, no petitions for its repeal are to be found in the journals. They are equally silent with regard to the marriage act, another topic of popular obloquy. Some petitions appear to have been presented against the bill for naturalization of foreign protestants; but probably on the ground of its injurious effect on the parties themselves. The great multiplication of petitions on matters wholly unconnected with particular interests cannot, I believe, be traced higher than those for the abolition of the slave trade in 1787; though a few were presented for reform about the end of the American war, which would undoubtedly have been rejected with indignation in any earlier stage of our constitution. It may be remarked also that petitions against bills imposing duties are not received, probably on the principle that they are intended for the general interests, though affecting the parties who thus complain of them. Hatsell, iii. 200.

The convocation of public meetings for the debate of political questions, as preparatory to such addresses or petitions, is still less according to the practice and precedents of our ancestors; nor does it appear that the sheriffs or other magistrates are more invested with a right of convening or presiding in assemblies of this nature than any other persons; though within the bounds of the public peace, it would not perhaps be contended that they have ever been unlawful. But that their origin can be distinctly traced higher than the year 1769 I am not prepared to assert. It will of course be understood, that this note is merely historical, and without reference to the expediency of that change in our constitutional theory which it illustrates.

least, before a court of justice, and be judged by the common principles of law. One Ashby, however, a burgess of Aylesbury, having sued the returning officer for refusing his vote; and three judges of the king's bench, against the opinion of chief-justice Holt, having determined for different reasons that it did not lie, a writ of error was brought in the house of lords, when the judgment was reversed. The house of commons took this up indignantly, and passed various resolutions, asserting their exclusive right to take cognisance of all matters relating to the election of their members. The lords repelled these by contrary resolutions; That by the known laws of this kingdom, every person having a right to give his vote, and being wilfully denied by the officer who ought to receive it, may maintain an action against such officer to recover damage for the injury; That the contrary assertion is destructive of the property of the subject, and tends to encourage corruption and partiality in returning officers; That the declaring persons guilty of breach of privilege for prosecuting such actions, or for soliciting and pleading in them, is a manifest assuming a power to control the law, and hinder the course of justice, and subject the property of Englishmen to the arbitrary votes of the house of commons. They ordered a copy of these resolutions to be sent to all the sheriffs, and to be communicated by them to all the boroughs in their respective counties.

A prorogation soon afterwards followed, but served only to give breathing time to the exasperated parties; for it must be observed, that though a sense of dignity and privilege no doubt swelled the majorities in each house, the question was very much involved in the general whig and tory course of politics. But Ashby, during the recess, having proceeded to execution on his judgment, and some other actions having been brought against the returning officer of Aylesbury, the commons again took it up, and committed the parties to Newgate. They moved the court of king's bench for a habeas corpus; upon the return to which, the judges, except Holt, thought themselves not warranted to set them at liberty against the commitment of the house. (State Trials, xiv. 849.) It was threatened to bring this by writ of error before the lords; and, in the disposition of that assembly, it seems probable that they would have inflicted a severe wound on the privileges of the lower house, which must in all probability have turned out a sort of suicide upon their own. But the commons interposed by resolving to commit to prison the counsel and agents concerned in prosecuting the habeas corpus, and by addressing the queen not to grant a writ of error. The queen properly answered, that as this matter, relating to the course of judicial proceedings, was of the highest consequence, she thought it necessary to weigh very carefully what she should do. The lords came to some important resolutions: That neither house of parliament hath any power by any vote or declaration to create to themselves any new privilege that is not warranted by the known laws and customs of parliament; That the house of commons, in committing to Newgate certain persons for prosecuting an action at law, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privileges of that house, have assumed to themselves alone a legislative power, by pretending to attribute the force of law to their declaration, have claimed a jurisdic-

lion not warranted by the constitution, and have assumed a new privilege, to which they can show no title by the law and custom of parliament; and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the house of commons; That every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right to a writ of habeas corpus, in order to obtain his liberty by the due course of law; That for the house of commons to punish any person for assisting a prisoner to procure such a writ is an attempt of dangerous consequence, and a breach of the statutes provided for the liberty of the subject; That a writ of error is not of grace but of right, and ought not to be denied to the subject when duly applied for, though at the request of either house of parliament.

These vigorous resolutions produced a conference between the houses, which was managed with more temper than might have been expected from the tone taken on both sides. But, neither of them receding in the slightest degree, the lords addressed the queen, requesting her to issue the writs of error demanded upon the refusal of the king's bench to discharge the parties committed by the house of commons. The queen answered the same day, that she should have granted the writs of error desired by them, but finding an absolute necessity of putting an immediate end to the session, she was sensible there could have been no further proceeding upon them. The meaning of this could only be, that by a prorogation all commitments by order of the lower house of parliament are determined, so that the parties could stand in no need of a habeas corpus. But a great constitutional question was thus wholly eluded.[1]

We may reckon the proceedings against Mr. Alexander Murray, in 1751, among the instances wherein the house of commons has been hurried by passion to an undue violence. This gentleman had been active in a contested Westminster election, on an anti-ministerial and perhaps Jacobite interest. In the course of an inquiry before the house, founded on a petition against the return, the high-bailiff named Mr. Murray as having insulted him in the execution of his duty. The house resolved to hear Murray by counsel in his defence, and the high-bailiff also by counsel in support of the charge, and ordered the former to give bail for his appearance from time to time. These, especially the last, were innovations on the practice of parliament, and justly opposed by the more cool-headed men. After hearing witnesses on both sides, it was resolved that Murray should be committed to Newgate, and should receive this sentence upon his knees. This command he steadily refused to obey, and thus drew on himself a storm of wrath at such insolence and audacity. But the times were no more, when the commons could inflict whippings and pillories on the refractory; and they were forced to content themselves with ordering that no person should be admitted to him in prison, which, on account of his ill health, they soon afterwards relaxed. The public voice is never favourable to such arbitrary exertions of mere power: at the expiration of the session, Mr. Murray, thus grown from an intriguing Jacobite into a confessor of popular liberty, was attended home by a sort of triumphal

[1] Parl. Hist. vi. 225. et post. State Trials, xiv. 605. et post.

procession amidst the applause of the people. In the next session he was again committed on the same charge; a proceeding extremely violent and arbitrary.[1]

[1] It has been always deemed a most important and essential privilege of the houses of parliament, that they may punish in this summary manner by commitment all those who disobey their orders to attend as witnesses, or for any purpose of their constitutional duties. No inquiry could go forward before the house at large or its committees, without this power to enforce obedience; especially when the information is to be extracted from public officers against the secret wishes of the court. It is equally necessary (or rather more so, since evidence not being on oath in the lower house, there can be no punishment in the course of law), that the contumacy or prevarication of witnesses should incur a similar penalty. No man would seek to take away this authority from parliament, unless he is either very ignorant of what has occurred in other times and in his own, or is a slave in the fetters of some general theory.

But far less can be advanced for several exertions of power on record in the journals, which under the name of privilege must be reckoned by impartial men irregularities and encroachments, capable only at some periods of a kind of apology from the unsettled state of the constitution. The commons began, in the famous or infamous case of Floyd, to arrogate a power of animadverting upon political offences, which was then wrested from them by the upper house. But in the first parliament of Charles I. they committed Montagu (afterwards the noted semi-popish bishop) to the serjeant, on account of a published book, containing doctrines they did not approve. (Journs. vii. 9 July, 1729.) For this was evidently the main point, though he was also charged with reviling two persons who had petitioned the house, which bore a distant resemblance to a contempt. In the long parliament, even from its commencement, every boundary was swept away; it was sufficient to have displeased the majority by act or word; but no precedents can be derived from a crisis of force struggling against force. If we descend to the reign of William III., it will be easy to discover instances of commitments, laudable in their purpose, but of such doubtful legality and dangerous consequence that no regard to the motive should induce us to justify the precedent. Graham and Burton, the solicitors of the treasury in all the worst state prosecutions under Charles and James, and Jenner, a baron of the exchequer, were committed to the Tower by the council immediately after the king's proclamation, with an intention of proceeding criminally against them. Some months afterwards, the suspension of the habeas corpus, which had taken place by bill, having ceased, they moved the king's bench to admit them to bail; but the house of commons took this up, and, after a report of a committee as to precedents, put them in custody of the serjeant-at-arms. (Com. Journs. 25 Oct. 1689.) On complaints of abuses in victualling the navy, the commissioners of that department were sent for in the serjeant's custody, and only released on bail ten days afterwards. (Parl. Hist. vii. 803.) But, without minutely considering the questionable

[1] Parliamentary History xiv. 888. et post, 1063. Walpole's Memoirs of the last Ten Years of George II., i. 75. et post.

instances of privilege that we may regret to find, I will select one wherein the house of commons appears to have gone far beyond either the reasonable or customary limits of privilege, and that with very little pretext of public necessity. In the reign of George I., a newspaper called Mist's Journal was notorious as the organ of the Jacobite faction. A passage full of the most impudent longings for the Pretender's restoration having been laid before the house, it was resolved, May 28. 1721, "That the said paper is a false, malicious, scandalous, infamous, and traitorous libel, tending to alienate the affections of his majesty's subjects, and to excite the people to sedition and rebellion, with an intention to subvert the present happy establishment, and to introduce popery and arbitrary power." They went on after this resolution to commit the printer Mist to Newgate, and to address the king that the authors and publishers of the libel might be prosecuted. (Parl. Hist. Dec. 5.) It is to be observed that no violation of privilege either was, or indeed could be alleged as the ground of this commitment; which seems to imply that the house conceived itself to be invested with a general power, at least in all political misdemeanours.

I have not observed any case more recent than this of Mist, wherein any one has been committed on a charge which could not possibly be interpreted as a contempt of the house, or a breach of its privilege. It became however the practice, without previously addressing the king, to direct a prosecution by the attorney-general for offences of a public nature, which the commons had learned in the course of any inquiry, or which had been formally laid before them. (Lords' Journs. 10 Jan. 1702. Parl. Hist. vi. 21.) This seems to have been introduced about the beginning of the reign of Anne, and is undoubtedly a far more constitutional course than that of arbitrary punishment by overstraining their privilege. In some instances, libels have been publicly burned by the order of one or other house of parliament.

I have principally adverted to the powers exerted by the lower house of parliament, in punishing those guilty of violating their privileges. It will of course be understood that the lords are at least equal in authority. In some respects indeed they have gone beyond. I do not mean that they would be supposed at present to have cognisance of any offence whatever, upon which the commons could not animadvert. Notwithstanding what they claimed in the case of Floyd, the subsequent denial by the commons, and abandonment by themselves, of any original jurisdiction, must stand in the way of their assuming such authority over misdemeanours, more extensively at least than the commons, as has been shown, have in some instances exercised it. But, while the latter have, with very few exceptions, and none since the restoration, contented themselves with commitment during the session, the lords have sometimes imposed fines, and, on some occasions in the reign of George II., have adjudged parties to imprisonment for a certain time. In one instance, so late as that reign, they sentenced a man to the pillory; and this had been done several times before. The judgments, however, of earlier ages give far less credit to the jurisdiction than they take from it. Besides the ever memorable case of Floyd, one John Blount, about the same time (27 Nov. 1621), was sentenced by the lords to imprisonment and hard labour in Bridewell during life. (Hargrave's Juridic. Arguments, vol. i. p. l. &c.)

It may surprise those who have heard of the happy balance of the English constitution, of the responsibility of every man to the law, and of the security of the subject from all unlimited power, especially as to personal freedom, that this power of awarding punishment at discretion of the houses of parliament is generally reputed to be universal and uncontrollable. This indeed was by no means received at the time when the most violent usurpations under the name of privilege were first made; the power was questioned by the royalist party who became its victims, and, among others, by the gallant Welshman, judge Jenkins, whom the long parliament had shut up in the Tower. But it has been several times brought into discussion before the ordinary tribunals; and the result has been, that if the power of parliament is not unlimited in right, there is at least no remedy provided against its excesses.

The house of lords in 1677 committed to the Tower four peers, among whom was the earl of Shaftesbury, for a high contempt; that is, for calling in question, during a debate, the legal continuance of parliament after a prorogation of more than twelve months. Shaftesbury moved the court of king's bench to release him upon a writ of habeas corpus. But the judges were unanimously of opinion, that they had no jurisdiction to inquire into a commitment by the lords of one of their body, or to discharge the party during the session, even though there might be, as appears to have been the case, such technical informality on the face of the commitment, as would be sufficient in an ordinary case to set it aside. (State Trials, vi. 1369. 1 Mod. Reports, 159.)

Lord Shaftesbury was at this time in vehement opposition to the court. Without insinuating that this had any effect upon the judges, it is certain that a few years afterwards they were less inclined to magnify the privileges of parliament. Some who had been committed, very wantonly and oppressively, by the commons in 1680, under the name of abhorrers, brought actions for false imprisonment against Topham, the serjeant-at-arms. In one of these he put in what is called a plea to the jurisdiction, denying the competence of the court of king's bench, inasmuch as the alleged trespass had been done by order of the knights, citizens, and burgesses of parliament. But the judges overruled this plea, and ordered him to plead in bar to the action. We do not find that Topham complied with this; at least judgments appear to have passed against him in these actions.[1] The commons, after the revolution, entered on the subject, and summoned two of the late judges, Pemberton and Jones, to their bar. Pemberton answered that he remembered little of the case; but if the defendant should plead that he did arrest the plaintiff by order of the house, and should plead that to the jurisdiction of the king's bench, he thought, with submission, he could satisfy the house that such a plea ought to be overruled, and that he took the law to be so very clearly. The house pressed for his reasons, which he rather declined to give. But on a subsequent day he fully admitted that the order of the house was sufficient to take any one into custody, but that it ought to be pleaded in bar, and not to the jurisdiction, which would be of no detriment to the party, nor affect his substantial defence. It did not appear however that he had given

[1] State Trials, xii. 822. T. Jones, Reports, 208.

any intimation from the bench of so favourable a leaning towards the rights of parliament; and his present language might not uncharitably be ascribed to the change of times. The house resolved that the orders and proceedings of this house being pleaded to the jurisdiction of the court of king's bench, ought not to be overruled; that the judges had been guilty of a breach of privilege, and should be taken into custody. (Journs., 10. 12. 19. July, 1689.)

I have already mentioned that, in the course of the controversy between the two houses on the case of Ashby and White, the commons had sent some persons to Newgate for suing the returning officer of Aylesbury in defiance of their resolutions; and that, on their application to the king's bench to be discharged on their habeas corpus, the majority of the judges had refused it. Three judges, Powis, Gould, and Powell, held that the courts of Westminster Hall could have no power to judge of the commitments of the houses of parliament; that they had no means of knowing what were the privileges of the commons, and consequently could not know their boundaries; that the law and custom of parliament stood on its own basis, and was not to be decided by the general rules of law; that no one had ever been discharged for such a commitment, which was an argument that it could not be done. Holt, the chief-justice, on the other hand maintained that no privilege of parliament could destroy a man's right, such as that of bringing an action for a civil injury; that neither house of parliament could separately dispose of the liberty and property of the people, which could only be done by the whole legislature; that the judges were bound to take notice of the customs of parliament, because they are part of the law of the land, and might as well be learned as any other part of the law. "It is the law," he said, "that gives the queen her prerogative; it is the law gives jurisdiction to the house of lords, as it is the law limits the jurisdiction of the house of commons." The eight other judges having been consulted, though not judicially, are stated to have gone along with the majority of the court, in holding that a commitment by either house of parliament was not cognisable at law. But from some of the resolutions of the lords on this occasion which I have quoted above, it may seem probable that, if a writ of error had been ever heard before them, they would have leaned to the doctrine of chief justice Holt, unless indeed withheld by the reflection that a similar principle might easily be extended to themselves. (State Trials, xiv. 849.)

It does not appear that any commitment for breach of privilege was disputed until the year 1751; when Mr. Alexander Murray, of whom mention has been made, caused himself to be brought before the court of king's bench on a habeas corpus. But the judges were unanimous in refusing to discharge him. "The house of commons," said Mr. justice Wright, "is a high court, and it is agreed on all hands that they have power to judge of their own privileges; it need not appear to us what the contempt is for; if it did appear, we could not judge thereof."—"This court," said Mr. justice Denison, "has no jurisdiction in the present case. We granted the habeas corpus, not knowing what the commitment was; but now it appears to be for a contempt of the privileges of the house of commons. What the privileges of either

house are we do not know; nor need they tell us what the contempt was, because we cannot judge of it; for I must call this court inferior to the commons with respect to judging of their privileges, and contempts against them." Mr. justice Foster agreed with the two others, that the house could commit for a contempt, which, he said, Holt had never denied in such a case as this before them. (State Trials, viii. 30.) It would be unnecessary to produce later cases which have occurred since the reign of George II., and elicited still stronger expressions from the judges of their incapacity to take cognisance of what may be done by the houses of parliament.

Notwithstanding such imposing authorities, there have not been wanting some who have thought that the doctrine of uncontrollable privilege is both eminently dangerous in a free country, and repugnant to the analogy of our constitution. The manly language of lord Holt has seemed to rest on better principles of public utility, and even perhaps of positive law.[1] It is not however to be inferred that the right of either house of parliament to commit persons, even not of their own body, to prison, for contempts or breaches of privilege, ought to be called in question. In some cases this authority is as beneficial, and even indispensable, as it is ancient and established. Nor do I by any means pretend that if the warrant of commitment merely recites the party to have been guilty of a contempt or breach of privilege, the truth of such allegation could be examined upon a return to a writ of habeas corpus, any more than in an ordinary case of felony. Whatever injustices may thus be done cannot have redress by any legal means; because the house of commons (or the lords, as it may be) are the fit judges of the fact, and must be presumed to have determined it according to right. But it is a more doubtful question whether, if they should pronounce an offence to be a breach of privilege, as in the case of the Aylesbury men, which a court of justice should perceive to be clearly none, or if they should commit a man on a charge of misdemeanour, and for no breach of privilege at all, as in the case of Mist the printer, such excesses of jurisdiction might not legally be restrained by the judges. If the resolutions of the lords in the business of Ashby and White are constitutional and true, neither house of parliament can create to itself any new privilege; a proposition surely so consonant to the rules of English law, which require prescription or statute as the basis of every right, that few will dispute it; and it must be still less lawful to exercise a jurisdiction over misdemeanours, by committing a party who would regularly be only held to bail on such a charge. Of this I am very certain, that if Mist, in the year 1721, had applied for his discharge on a habeas corpus, it would have been far more difficult

[1] This is very elaborately and dispassionately argued by Mr. Hargrave in his Juridical Arguments, above cited; also vol. ii. p. 183. "I understand it," he says, "to be clearly part of the law and custom of parliament that each house of parliament may inquire into and imprison for breaches of privilege." But this he thinks to be limited by law; and after allowing it clearly in cases of obstruction, arrest, assault, &c., on members, admits also that "the judicative power as to writing, speaking, or publishing of gross reflections upon the whole parliament or upon either house, though perhaps originally questionable, seems now of too long a standing and of too much frequency in practice to be well counteracted." But after mentioning the opinions of the judges in Crosby's case, Mr. H. observes: "I am myself far from being convinced that commitment for contempts by a house of parliament, or by the highest court of judicature in Westminster Hall, either ought to be, or are thus wholly privileged from all examination and appeal."

to have opposed it on the score of precedent or of constitutional right, than it was for the attorney-general of Charles I., nearly one hundred years before, to resist the famous arguments of Selden and Littleton, in the case of the Buckinghamshire gentlemen committed by the council. If a few scattered acts of power can make such precedents as a court of justice must take as its rule, I am sure the decision, neither in this case nor in that of ship-money, was so unconstitutional as we usually suppose: it was by dwelling on all authorities in favour of liberty, and by setting aside those which made against it, that our ancestors overthrew the claims of unbounded prerogative. Nor is this parallel less striking when we look at the tone of implicit obedience, respect, and confidence with which the judges of the eighteenth century have spoken of the houses of parliament, as if their sphere were too low for the cognisance of such a transcendent authority.[1] The same language almost to the words, was heard from the lips of the Hydes and Berkeleys in the preceding age, in reference to the king and to the privy council. But as, when the spirit of the government was almost wholly monarchical, so since it has turned chiefly to an aristocracy, the courts of justice have been swayed towards the predominant influence; not, in general, by any undue motives, but because it is natural for them to support power, to shun offence, and to shelter themselves behind precedent. They have also sometimes had in view the analogy of parliamentary commitments to their own power of attachment for contempt, which they hold to be equally uncontrollable; a doctrine by no means so dangerous to the subject's liberty, but liable also to no trifling objections.[2]

The consequences of this utter irresponsibility in each of the two houses will appear still more serious, when we advert to the unlimited power of punishment which it draws with it. The commons indeed do not pretend to imprison beyond the session; but the lords have imposed fines and definite imprisonment; and attempts to resist these have been unsuccessful. (Hargrave, ubi supra.) If the matter is to rest upon precedent, or upon what overrides precedent itself, the absolute failure of jurisdiction in the ordinary courts, there seems nothing (decency and discretion excepted) to prevent their repeating the sentences of James I.'s reign, whipping, branding, hard labour for life. Nay, they might order the usher of the black rod to take a man from their bar, and hang him up in the lobby. Such things would not

[1] Mr. justice Gould, in Crosby's case, as reported by Wilson, observes: "It is true this court did, in the instance alluded to by the council at the bar (Wilkes's case, 2 Wilson, 151.), determine upon the privilege of parliament in the case of a libel; but then that privilege was promulged and known; it existed in records and law-books, and was allowed by parliament itself. But *even in that case we now know that we were mistaken; for the house of commons have since determined, that privilege does not extend to matters of libel.*" It appears, therefore, that Mr. justice Gould thought a declaration of the house of commons was better authority than a decision of the court of common pleas, as to a privilege which, as he says, existed in records and law-books.

[2] "I am far from subscribing to all the latitude of the doctrine of attachments for contempts of the king's courts of Westminster, especially the king's bench, as it is sometimes stated, and it has been sometimes practised." Hargrave, ii. 213.

"The principle upon which attachments issue for libels on courts is of a more enlarged and important nature: it is *to keep a blaze of glory around them*, and to deter people from attempting to render them contemptible in the eyes of the people." Wilmot's Opinions and Judgments, p. 270. Yet the king, who seems as much entitled to this blaze of glory as his judges, is driven to the verdict of a jury before the most libellous insult on him can be punished.

be done, and, being done, would not be endured; but it is much that any sworn ministers of the law should, even by indefinite language, have countenanced the legal possibility of tyrannous power in England. The temper of government itself, in modern times, has generally been mild; and this is probably the best ground of confidence in the discretion of parliament; but popular, that is, numerous bodies are always prone to excess, both from the reciprocal influences of their passions, and the consciousness of irresponsibility; for which reasons a democracy, that is, the absolute government of the majority, is in general the most tyrannical of any. Public opinion, it is true, in this country, imposes a considerable restraint; yet this check is somewhat less powerful in that branch of the legislature which has gone the farthest in chastising breaches of privilege. I would not be understood however to point at any more recent discussions on this subject; were it not, indeed, beyond the limits prescribed to me, it might be shown that the house of commons, in asserting its jurisdiction, has receded from much of the arbitrary power which it once arrogated, and which some have been disposed to bestow upon it.

IV. It is commonly and justly said, that civil liberty is not only consistent with, but in its terms implies, the restrictive limitations of natural liberty, which are imposed by law. But as these are not the less real limitations of liberty, it can hardly be maintained that the subject's condition is not impaired by very numerous restraints upon his will, even without reference to their expediency. The price may be well paid; but it is still a price that it costs some sacrifice to pay. Our statutes have been growing in bulk and multiplicity with the regular session of parliament, and with the new system of government; all abounding with prohibitions and penalties, which every man is presumed to know, but which no man, the judges themselves included, can really know with much exactness. We literally walk amidst the snares and pitfalls of the law. The very doctrine of the more rigid casuist, that men are bound in conscience to observe all the laws of their country, has become impracticable through their complexity and inconvenience; and most of us are content to shift off their penalties in the *mala prohibita* with as little scruple as some feel in risking those of graver offences. But what more peculiarly belongs to the present subject is the systematic encroachment upon ancient constitutional principles, which has for a long time been made through new enactments proceeding from the crown, chiefly in respect to the revenue.[1] These may be traced indeed in the statute-book, at least as

[1] This effect of continual new statutes is well pointed out in a speech ascribed to sir William Wyndham, in 1734:—"The learned gentleman spoke (he says) of the prerogative of the crown, and asked us if it had lately been extended beyond the bounds prescribed to it by law. Sir, I will not say that there have been lately any attempts to extend it beyond the bounds prescribed by law, but I will say that these bounds have been of late so vastly enlarged that there seems to be no great occasion for any such attempt. What are the many penal laws made within these forty years, but so many extensions of the prerogative of the crown, and as many diminutions of the liberty of the subject? And whatever the necessity was that brought us into the enacting of such laws, it was a fatal necessity; it has greatly added to the power of the crown, and particular care ought to be taken not to throw any more weight into that scale." Parl. Hist. ix. 463.

Among the modern statutes which have strengthened the hands of the executive power, we should mention the riot act, 1 Geo. I. stat. 2. c. 5., whereby all persons tumultuously assem-

high as the restoration, and really began in the arbitrary times of revolution which preceded it. They have, however, been gradually extended along with the public burthens, and as the severity of these has prompted fresh artifices of evasion. It would be curious, but not within the scope of this work, to analyze our immense fiscal law, and to trace the history of its innovations. These consist partly in taking away the cognisance of offences against the revenue from juries, whose partiality in such cases there was in truth much reason to apprehend, and vesting it either in commissioners of the revenue itself or in magistrates; partly in anomalous and somewhat arbitrary powers with regard to the collection; partly in deviations from the established rules of pleading and evidence, by throwing on the accused party in fiscal causes the burthen of proving his innocence, or by superseding the necessity of rigorous proof as to matters wherein it is ordinarily required; and partly in shielding the officers of the crown, as far as possible, from their responsibility for illegal actions, by permitting special circumstances of justification to be given in evidence without being pleaded, or by throwing impediments of various kinds in the way of the prosecutor, or by subjecting him to unusual costs in the event of defeat.

These restraints upon personal liberty, and what is worse, these endeavours, as they seem, to prevent the fair administration of justice between the crown and the subject, have in general, more especially in modern times, excited little regard as they have passed through the houses of parliament. A sad necessity has over-ruled the maxims of ancient law; nor is it my business to censure our fiscal code, but to point out that it is to be counted as a set-off against the advantages of the revolution, and has in fact diminished the freedom and justice which we claim for our polity. And that its provisions have sometimes gone so far as to give alarm to not very susceptible minds may be shown from a remarkable debate in the year 1737. A bill having been brought in by the ministers to prevent smuggling, which contained some unusual clauses, it was strongly opposed, among other peers, by lord chancellor Talbot himself, of course, in the cabinet, and by lord Hardwick, then chief-justice, a regularly bred crown-lawer, and in his whole life disposed to hold very high the authority of government. They objected to a clause subjecting any three persons travelling with arms, to the penalty of transportation, on proof by two witnesses, that their intention was to assist in the clandestine landing, or carrying away prohibited or unaccustomed goods. "We have in our laws," said one of the opposing lords, "no such thing as a crime by implication, nor can a malicious intention ever be proved by witnesses. Facts only are admitted to be proved, and from those facts the judge and jury are to determine with what intention they were committed; but no judge or jury can ever, by our laws, suppose, much less determine, that an action, in itself innocent or indifferent, was attended with a criminal

bled to the disturbance of the public peace, and not dispersing within one hour after proclamation made by a single magistrate, are made guilty of a capital felony. I am by no means controverting the expediency of this law; but, especially when combined with the prompt aid of a military force, it is surely a compensation for much that may seem to have been thrown into the popular scale.

and malicious intention. Another security for our liberties is, that no subject can be imprisoned unless some felonious and high crime be sworn against him. This, with respect to private men, is the very foundation stone of all our liberties; and if we remove it, if we but knock off a corner, we may probably overturn the whole fabric. A third guard for our liberties is that right which every subject has, not only to provide himself with arms proper for his defence, but to accustom himself to the use of those arms, and to travel with them whenever he has a mind." But the clause in question, it was contended, was repugnant to all the maxims of free government. No presumption of a crime could be drawn from the mere wearing of arms, an act not only innocent, but highly commendable; and therefore the admitting of witnesses to prove that any of these men were armed, in order to assist in smuggling, would be the admitting of witnesses to prove an intention, which was inconsistent with the whole tenor of our laws.[1] They objected to another provision, subjecting a party against whom information should be given that he intended to assist in smuggling, to imprisonment without bail, though the offence itself were in its nature bailable; to another, which made informations for assault upon officers of the revenue triable in any county of England; and to a yet more startling protection thrown round the same favoured class, that the magistrates should be bound to admit them to bail on charges of killing or wounding any one in the execution of their duty. The bill itself was carried by no great majority; and the provisions subsist at this day, or perhaps have received a further extension.

It will thus appear to every man who takes a comprehensive view of our constitutional history, that the executive government, though shorn of its lustre, has not lost so much of its real efficacy by the consequences of the revolution as is often supposed; at least, that with a regular army to put down insurrection, and an influence sufficient to obtain fresh statutes of restriction, if such should ever be deemed necessary, it is not exposed, in the ordinary course of affairs, to any serious hazard. But we must here distinguish the executive government, using that word in its largest sense, from the crown itself, or the personal authority of the sovereign. This is a matter of rather delicate inquiry, but too material to be passed by.

The real power of the prince, in the most despotic monarchy, must have its limits from nature, and bear some proportion to his courage, his activity, and his intellect. The tyrants of the East become puppets or slaves of their vizirs; or it turns to a game of cunning, wherein the winner is he who shall succeed in tying the bow-string round the other's neck. After some ages of feeble monarchs, the titular royalty is found wholly separated from the power of command, and glides on to posterity in its languid channel, till some usurper or conqueror stops up the stream for ever. In the civilized kingdoms of Europe, those very institutions which secure the permanence of royal families, and afford them a guarantee against manifest subjection to a minister, take generally out of the hands of the sovereign the practical government of his people. Unless his capacities are above the level of ordinary

[1] 9 Geo. II. c. 35. sect. 10. 13. Parl. Hist. ix. 1229. I quote this as I find it; but probably the expressions are not quite correct; for the reasoning is not so.

kings, he must repose on the wisdom and diligence of the statesmen he employs, with the sacrifice, perhaps, of his own prepossessions in policy, and against the bent of his personal affections. The power of a king of England is not to be compared with an ideal absoluteness, but with that which could be enjoyed in the actual state of society, by the same person in a less bounded monarchy.

The descendants of William the Conqueror on the English throne, down to the end of the seventeenth century, have been a good deal above the average in those qualities which enable, or at least induce, kings to take on themselves a large share of the public administration; as will appear by comparing their line with that of the house of Capet, or perhaps most others during an equal period. Without going farther back, we know that Henry VII., Henry VIII., Elizabeth, the four kings of the house of Stuart, though not always with as much ability as diligence, were the master-movers of their own policy, not very susceptible of advice, and always sufficiently acquainted with the details of government to act without it. This was eminently the case also with William III., who was truly his own minister, and much better fitted for that office than those who served him. The king, according to our constitution, is supposed to be present in council, and was in fact usually, or very frequently, present, so long as the council remained as a deliberative body for matters of domestic and foreign policy. But, when a junto or cabinet came to supersede that ancient and responsible body, the king himself ceased to preside, and received their advice separately, according to their respective functions of treasurer, secretary, or chancellor, or that of the whole cabinet through one of its leading members. This change however was gradual; for cabinet councils were sometimes held in the presence of William and Anne; to which other counsellors, although not strictly of that select number, were occasionally summoned.

But on the accession of the house of Hanover, this personal superintendence of the sovereign necessarily came to an end. The fact is hardly credible, that, George I. being incapable of speaking English, as sir Robert Walpole was of conversing in French, the monarch and his minister held discourse with each other in Latin.[1] It is impossible that, with so defective a means of communication, (for Walpole cannot be supposed to have spoken readily a language very little familiar in this country,) George could have obtained much insight into his domestic affairs, or been much acquainted with the characters of his subjects. We know, in truth, that he nearly abandoned the consideration of both, and trusted his ministers with the entire management of this kingdom, content to employ its great name for the promotion of his electoral interests. This continued in a less degree to be the case with his son, who, though better acquainted with the language and circumstances of Great Britain, and more jealous of his prerogative, was conscious of his incapacity to determine on matters of domestic government, and reserved almost his whole attention for the politics of Germany.

[1] Cox's Walpole, i. 296. H. Walpole's Works, iv. 476. The former, however seems to rest on H. Walpole's verbal communication, whose want of accuracy, or veracity, or both, is so palpable that no great stress can be laid on his testimony. I believe, however, that the fact of George I. and his minister conversing in Latin may be proved on other authority.

The broad distinctions of party contributed to weaken the real supremacy of the sovereign. It had been usual before the revolution, and in the two succeeding reigns, to select ministers individually at discretion; and, though some might hold themselves at liberty to decline office, it was by no means deemed a point of honour and fidelity to do so. Hence men in the possession of high posts had no strong bond of union, and frequently took opposite sides on public measures of no light moment. The queen particularly was always loth to discard a servant on account of his vote in parliament; a conduct generous perhaps, but feeble, inconvenient, when carried to such excess, in our constitution, and in effect holding out a reward to ingratitude and treachery. But the whigs having come exclusively into office under the line of Hanover (which, as I have elsewhere observed, was inevitable), formed a sort of phalanx, which the crown was not always able to break, and which never could have been broken, but for that internal force of repulsion by which personal cupidity and ambition are ever tending to separate the elements of factions. It became the point of honour among public men to fight uniformly under the same banner, though not perhaps for the same cause; if indeed there was any cause really fought for, but the advancement of a party. In this preference of certain denominations, or of certain leaders, to the real principles which ought to be the basis of political consistency, there was an evident deviation from the true standard of public virtue; but the ignominy attached to the dereliction of friends for the sake of emolument, though it was every day incurred, must have tended gradually to purify the general character of parliament. Meanwhile the crown lost all that party attachments gained; a truth indisputable on reflection, though while the crown and the party in power act in the same direction, the relative efficiency of the two forces is not immediately estimated. It was seen, however, very manifestly in the year 1746; when, after long bickering between the Pelhams and lord Granville, the king's favourite minister, the former, in conjunction with a majority of the cabinet, threw up their offices, and compelled the king, after an abortive effort at a new administration, to sacrifice his favourite, and replace those in power whom he could not exclude from it. The same took place in a later period of his reign, when after many struggles he submitted to the ascendancy of Mr. Pitt.[1]

[1] H. Walpole's Memoirs of the last Ten Years. Lord Waldegrave's Memoirs. In this well-written little book, which having been published in the modern fashion, at a price disproportioned to its length, has not been sufficiently known, the character of George II. in reference to his constitutional position is thus delicately drawn: "He has more knowledge of foreign affairs than most of his ministers, and has good general notions of the constitution, strength, and interest of this country; but, being past thirty when the Hanover succession took place, and having since experienced the violence of party, the injustice of popular clamour, the corruption of parliaments, and the selfish motives of pretended patriots, it is not surprising that he should have contracted some prejudices in favour of those governments where the royal authority is under less restraint. Yet prudence has so far prevailed over these prejudices, that they have never influenced his conduct. On the contrary, many laws have been enacted in favour of public liberty; and in the course of a long reign there has not been a single attempt to extend the prerogative of the crown beyond its proper limits. He has as much personal bravery as any man, though his political courage seems somewhat problematical; however, it is a fault on the right side; for had he always been as firm and undaunted in the closet as he showed himself at Oudenarde and Dettingen, he might not have proved quite so good a king in this limited monarchy." P. 5. This was written in 1757.

The real tories, those I mean who adhered to the principles expressed by that name, thought the constitutional prerogative of the crown impaired by a conspiracy of its servants. The

It seems difficult for any king of England, however conscientiously observant of the lawful rights of his subjects, and of the limitations they impose on his prerogative, to rest always very content with this practical condition of the monarchy. The choice of his counsellors, the conduct of government, are intrusted, he will be told, by the constitution to his sole pleasure. Yet both as to the one and the other he finds a perpetual disposition to restrain his exercise of power; and, though it is easy to demonstrate that the public good is far better promoted by the virtual control of parliament and the nation over the whole executive government than by adhering to the letter of the constitution, it is not to be expected that the argument will be conclusive to a royal understanding. Hence, he may be tempted to play rather a petty game, and endeavour to regain, by intrigue and insincerity, that power of acting by his own will, which he thinks unfairly wrested from him. A king of England, in the calculations of politics, is little more than one among the public men of the day; taller indeed, like Saul or Agamemnon, by the head and shoulders, and therefore with no slight advantages in the scramble; but not a match for the many, unless he can bring some dexterity to second his strength, and make the best of the self-interest and animosities of those with whom he has to deal. And of this there will generally be so much, that in the long run he will be found to succeed in the greater part of his desires. Thus George I. and George II., in whom the personal authority seems to have been at the lowest point it has ever reached, drew their ministers, not always willingly, into that course of continental politics which was supposed to serve the purposes of Hanover far better than of England. It is well known that the Walpoles and the Pelhams condemned in private this excessive predilection of their masters for their native country, which alone could endanger their English throne.[1] Yet after

notions are expressed in some Letters on the English Nation, published about 1756, under the name of Battista Angeloni, by Dr. Shebbeare, once a Jacobite, and still so bitter an enemy of William III. and George I. that he stood in the pillory, not long afterwards, for a libel on those princes (among other things); on which Horace Walpole justly animadverts, as a stretch of the law by lord Mansfield destructive of all historical truth. Memoirs of the last Ten Years, ii. 328. Shebbeare, however, was afterwards pensioned, along with Johnson, by lord Bute, and at the time when these letters were written may possibly have been in the Leicester-house interest. Certain it is that the self-interested cabal who belonged to that little court endeavoured too successfully to persuade its chief and her son that the crown was reduced to a state of vassalage, from which it ought to be emancipated; and the government of the duke of Newcastle, as strong in party connexion as it was contemptible in ability and reputation, afforded them no bad argument. The consequences are well known, but do not enter into the plan of this work.

[1] Many proofs of this occur in the correspondence published by Mr. Coxe. Thus Horace Walpole writing to his brother sir Robert, in 1739, says: "King William had no other object but the liberties and balance of Europe; but, good God! what is the case now? I will tell you in confidence; little, low, partial electoral notions are able to stop or confound the best conducted project for the public." Mem. of sir R. Walpole, iii. 535. The Walpoles had, some years before, disapproved the policy of lord Townshend on account of his favouring the king's Hanoverian prejudices. Id. i. 334. And in the preceding reign both these whig leaders were extremely disgusted with the Germanism and continual absence of George I., Id. ii. 116. 297.; though first Townshend, and afterwards Walpole, according to the necessity, or supposed necessity, which controls statesmen (that is, the fear of losing their places,) became in appearance the passive instruments of royal pleasure.

It is now however known that George II. had been induced by Walpole to come into a scheme by which Hanover, after his decease, was to be separated from England. It stands on the indisputable authority of speaker Onslow. "A little while before sir Robert Walpole's fall, (and as a popular act to save himself, for he went very unwillingly out of his offices and power,) he took me one day aside, and said, 'What will you say, speaker, if this hand of mine shall

the two latter brothers had inveighed against lord Grenville, and driven him out of power for seconding the king's pertinacity in continuing the war of 1743, they went on themselves in the same track for at least two years, to the imminent hazard of losing for ever the Low Countries and Holland, if the French government, so indiscriminately charged with ambition, had not displayed extraordinary moderation at the treaty of Aix la Chapelle. The twelve years that ensued gave more abundant proofs of the submissiveness with which the schemes of George II. for the good of Hanover were received by his ministers, though not by his people; but the most striking instance of all is the abandonment by Mr. Pitt himself of all his former professions in pouring troops into Germany. I do not inquire whether a sense of national honour might not render some of these measures justifiable, though none of them were advantageous? but it is certain that the strong bent of the king's partiality forced them on against the repugnance of most statesmen, as well as of the great majority in parliament and out of it.

Comparatively however with the state of prerogative before the revolution, we can hardly dispute that there has been a systematic diminution of the reigning prince's control, which, though it may be compensated or concealed in ordinary times by the general influence of the executive administration, is of material importance in a constitutional light. Independently of other consequences which might be pointed out as probable or contingent, it affords a real security against endeavours by the crown to subvert or essentially impair the other parts of our government. For, though a king may believe himself and his posterity to be interested in obtaining arbitrary power, it is far less likely that a minister should desire to do so—I mean arbitrary, not in relation to temporary or partial abridgements of the subject's liberty, but to such points as Charles I. and James II. attempted to execute. What indeed might be effected by a king, at once able, active, popular, and ambitious, should such ever unfortunately appear in this country, it is not easy to predict; certainly his reign would be dangerous, on one side or other, to the present balance of the constitution. But against this contingent evil, or the far more probable encroachments of ministers, which, though not going the full length of despotic power, might slowly undermine and contract the rights of the people, no positive statutes can be devised so effectual as the vigilance of the people themselves and their increased means of knowing and estimating the measures of their government.

bring a message from the king to the house of commons, declaring his consent to having any of his family, after his death, to be made, by act of parliament, incapable of inheriting and enjoying the crown, and possessing the electoral dominions at the same time?' My answer was, 'Sir, it will be as a message from heaven.' He replied, 'It will be done.' But it was not done; and I have good reason to believe, it would have been opposed, and rejected at that time, because it came from him, and by the means of those who had always been most clamorous for it; and thus perhaps the opportunity was lost: when will it come again? It was said that the prince at that juncture would have consented to it, if he could have had the credit and popularity of the measure, and that some of his friends were to have moved it in parliament, but that the design at St. James's prevented it. Notwithstanding all this, I have had some thoughts that neither court ever really intended the thing itself; but that it came on and went off, by a jealousy of each other in it, and that both were equally pleased that it did so, from an equal fondness (very natural) for their own native country." Notes on Burnet. iv. 490. Oxf. edit. This story has been told before, but not in such a manner as to preclude a doubt of its authenticity.

The publication of regular newspapers, partly designed for the communication of intelligence, partly for the discussion of political topics, may be referred to the latter part of the reign of Anne, when they obtained great circulation, and became the accredited organs of different factions. The tory ministers were annoyed at the vivacity of the press, both in periodical and other writings, which led to a stamp-duty, intended chiefly to diminish their number, and was nearly producing more pernicious restrictions, such as renewing the licensing-act, or compelling authors to acknowledge their names.[1] These however did not take place, and the government more honourably coped with their adversaries in the same warfare; nor, with Swift and Bolingbroke on their side, could they require, except indeed through the badness of their cause, any aid from the arm of power.[2]

In a single hour, these two great masters of language were changed from advocates of the crown to tribunes of the people; both more distinguished as writers in this altered scene of their fortunes, and certainly among the first political combatants with the weapons of the press whom the world has ever known. Bolingbroke's influence was of course greater in England; and, with all the signal faults of his public character, with all the factiousness which dictated most of his writings, and the indefinite declamation or shallow reasoning which they frequently display, they have merits not always sufficiently acknowledged. He seems first to have made the tories reject their old tenets of exalted prerogative and hereditary right, and scorn the high-church theories which they had maintained under William and Anne. His Dissertation on Parties, and Letters on the History of England, are in fact written on whig principles (if I know what is meant by that name) in their general tendency; however a politician, who had always some particular end in view, may have fallen into several inconsistencies. The same character is due to the Craftsman, and to most of the temporary pamphlets directed against sir Robert Walpole. They teemed, it is true, with exaggerated declamations on the side of liberty; but that was the side they took; it was to generous prejudices they appealed, nor did they ever advert to the times before the revolution but with contempt or abhorrence. Libels there were indeed of a different class, proceeding from the Jacobite school; but these obtained little regard; the Jacobites themselves, or such as affected to be so, having more frequently espoused that cause from a sense of dissatisfaction with the conduct of the reigning family, than from much regard to the pretensions of the other. Upon the whole matter it must be evident to every person who is at all conversant with the publications of George II.'s reign, with the poems, the novels, the essays, and almost all the literature of the time, that what are called the popular or liberal doctrines of government

[1] A bill was brought in for this purpose in 1712, which Swift, in his History of the Last Four Years, who never printed anything with his name, naturally blames. It miscarried probably on account of this provision. Parl. Hist. vi. 1141. But the queen, on opening the session, in April, 1713, recommended some new law to check the licentiousness of the press. Id. 1173. Nothing however was done in consequence.

[2] Bolingbroke's letter to the Examiner, in 1710, excited so much attention, that it was answered by lord Cowper, then chancellor, in a letter to the Tatler. Somers Tracts, xiii. 75.; where sir Walter Scott justly observes, that the fact of two such statesmen becoming the correspondents of periodical publications shows the influence they must have acquired over the public mind.

were decidedly prevalent. The supporters themselves of the Walpole and Pelham administrations, though professedly whigs, and tenacious of revolution principles, made complaints, both in parliament and in pamphlets, of the democratical spirit, the insubordination to authority, the tendency to republican sentiments, which they alleged to have gained ground among the people. It is certain that the tone of popular opinion gave some countenance to these assertions, though much exaggerated, in order to create alarm in the aristocratical classes, and furnish arguments against redress of abuses.

The two houses of parliament are supposed to deliberate with closed doors. It is always competent for any one member to insist that strangers be excluded; not on any special ground, but by merely enforcing the standing order for that purpose. It has been several times resolved, that it is a high breach of privilege to publish any speeches or proceedings of the commons; though they have since directed their own votes and resolutions to be printed. Many persons have been punished by commitment for this offence; and it is still highly irregular, in any debate, to allude to the reports in newspapers, except for the purpose of animadverting on the breach of privilege.[1] Notwithstanding this pretended strictness, notices of the more interesting discussions were frequently made public; and entire speeches were sometimes circulated by those who had sought popularity in delivering them. After the accession of George I. we find a pretty regular account of debates in an annual publication, Boyer's Historical Register, which was continued to the year 1737. They were afterwards published monthly, and much more at length, in the London and the Gentleman's Magazines; the latter, as is well known, improved by the pen of Johnson, yet not so as to lose by any means the leading scope of the arguments. It follows of course that the restriction upon the presence of strangers had been almost entirely dispensed with. A transparent veil was thrown over this innovation by disguising the names of the speakers, or more commonly by printing only initial and final letters. This ridiculous affectation of concealment was extended to many other words in political writings, and had not wholly ceased in the American war.

It is almost impossible to over-rate the value of this regular publication of proceedings in parliament, carried as it has been in our own time to nearly as great copiousness aud accuracy as is probably attainable. It tends manifestly and powerfully to keep within bounds the supineness and negligence, the partiality and corruption, to which every

[1] It was resolved, nem. con., Feb. 26. 1729, That it is an indignity to, and a breach of the privilege of this house, for any person to presume to give, in written or printed newspapers, any account or minutes of the debates, or other proceedings of this house or of any committee thereof; and that upon discovery of the authors, &c., this house will proceed against the offenders with the utmost severity. Parl. Hist. viii. 683. There are former resolutions to the same effect. The speaker having himself brought the subject under consideration some years afterwards, in 1738, the resolution was repeated in nearly the same words, but after a debate, wherein, though no one undertook to defend the practice, the danger of impairing the liberty of the press was more insisted upon than would formerly have been usual; and sir Robert Walpole took credit to himself, justly enough, for respecting it more than his predecessors. Id. x. 800. Coxe's Walpole, i. 572. Edward Cave, the well-known editor of the Gentleman's Magazine, and the publisher of another magazine, was brought to the bar, April 30. 1747, for publishing the house's debates; when the former denied that he retained any person in pay to make the speeches, and after expressing his contrition was discharged on payment of fees. Parl. Hist. xiv. 57.

parliament, either from the nature of its composition or the frailty of mankind, must more or less be liable. Perhaps the constitution would not have stood so long, or rather would have stood like an useless and untenanted mansion, if this unlawful means had not kept up a perpetual intercourse, a reciprocity of influence, between the parliament and the people. A stream of fresh air, boisterous perhaps sometimes as the winds of the north, yet as healthy and invigorating, flows in to renovate the stagnant atmosphere, and to prevent that *malaria* which self-interest and oligarchical exclusiveness are always tending to generate. Nor has its importance been less perceptible in affording the means of vindicating the measures of government, and securing to them, when just and reasonable, the approbation of the majority among the middle ranks, whose weight in the scale has been gradually enhanced during the last and the present centuries.

This augmentation of the democratical influence, using that term as applied to the commercial and industrious classes in contradistinction to the territorial aristocracy, was the slow but certain effect of accumulated wealth and diffused knowledge, acting however on the traditional notions of freedom and equality which had ever prevailed in the English people. The nation, exhausted by the long wars of William and Anne, recovered strength in thirty years of peace that ensued; and in that period, especially under the prudent rule of Walpole, the seeds of our commercial greatness were gradually ripened. It was evidently the most prosperous season that England had ever experienced; and the progression, though slow, being uniform, the reign perhaps of George II. might not disadvantageously be compared, for the real happiness of the community, with that more brilliant but uncertain and oscillatory condition which has ensued. A distinguished writer has observed that the labourer's wages have never, at least for many ages, commanded so large a portion of subsistence as in this part of the eighteenth century.[1] The public debt, though it excited alarms from its magnitude, at which we are now accustomed to smile, and though too little care was taken for redeeming it, did not press very heavily on the nation; as the low rate of interest evinces, the government securities at three per cent. having generally stood above par. In the war of 1743, which from the selfish practice of relying wholly on loans did not much retard the immediate advance of the country, and still more after the peace of Aix la Chapelle, a striking increase of wealth became perceptible.[2] This was shown in one circumstance directly affecting the character of the constitution. The smaller boroughs, which had been from the earliest time under the command of neighbouring peers and gentlemen, or sometimes of the crown, were attempted by rich capitalists, with no other connexion or recommendation than one which is generally sufficient. This appears to have been first observed in the general elections of 1747 and 1754;[3] and though the prevalence of bribery in a less degree is attested by the statute-book, and the journals of parliament from the revolution, it seems not to have broken down

[1] Malthus, Principles of Political Economy (1820), p. 279.

[2] Macpherson (or Anderson), Hist. of Commerce. Chalmer's Estimate of Strength of Great Britain. Sinclair's Hist. of Revenue, *cum multis aliis.*

[3] Tindal, apud Parl. Hist. xiv. 66. I have read the same in other books, but know not at present where to search for the passages.

all flood-gates till near the end of the reign of George II. or rather perhaps the first part of the next. The sale of seats in parliament, like any other transferable property, is never mentioned in any book that I remember to have seen of an earlier date than 1760. We may dispense therefore with the inquiry in what manner this extraordinary traffic has affected the constitution, observing only that its influence must have tended to counteract that of the territorial aristocracy, which is still sufficiently predominant. The country gentlemen, who claimed to themselves a character of more independence and patriotism than could be found in any other class, had long endeavoured to protect their ascendency by excluding the rest of the community from parliament. This was the principle of the bill, which, after being frequently attempted, passed into a law during the tory administration of Anne, requiring every member of the commons, except those for the universities, to possess, as a qualification for his seat, a landed estate, above all encumbrances, of 300*l.* a year.[1] By a later act of George II., with which it was thought expedient, by the government of the day, to gratify the landed interest, this property must be stated on oath by every member on taking his seat, and, if required, at his election. (33 G. II. c. 20.) The law is however notoriously evaded; and though much might be urged in favour of rendering a competent income the condition of eligibility, few would be found at present to maintain that the freehold qualification is not required both unconstitutionally, according to the ancient theory of representation, and absurdly, according to the present state of property in England. But I am again admonished, as frequently I have been in writing these last pages, to break off from subjects that might carry me too far away from the business of this history; and, content with compiling and selecting the records of the past, to shun the difficult and ambitious office of judging the present, or of speculating upon the future.

CHAPTER XVII.

ON THE CONSTITUTION OF SCOTLAND.

Early State of Scotland—Introduction of Feudal System—Scots Parliament—Power of the Aristocracy—Royal Influence in Parliament—Judicial Power—Court of Session—Reformation—Power of the Presbyterian Clergy—Their Attempts at Independence on the State—Andrew Melvil—Success of James VI. in restraining them—Establishment of Episcopacy—Innovations of Charles I.—Arbitrary Government—Civil War—Tyrannical Government of Charles II.—Reign of James VII.—Revolution, and Establishment of Presbytery—Reign of William III.—Act of Security—The Union—Gradual Decline of Jacobitism.—pp. 805–830.

[1] 9 Anne, c. 5. A bill for this purpose had passed the commons in 1696; the city of London and several other places petitioning against it. Journs. Nov. 21. &c. The house refused to let some of these petitions be read; I suppose on the ground that they related to a matter of general policy. These towns however had a very fair pretext for alleging that they were interested; and in fact a rider was added to the bill, that any merchant might serve for a place where he should be himself a voter, on making oath that he was worth 5000*l.* Journals, Dec. 19.

IT is not very profitable to inquire into the constitutional antiquities of a country which furnishes no authentic historian, nor laws, nor charters, to guide our research, as is the case with Scotland before the twelfth century. The latest and most laborious of her antiquaries appears to have proved that her institutions were wholly Celtic until that era, and greatly similar to those of Ireland. (Chalmers's Caledonian, vol. i. passim.) A total, though probably gradual, change must therefore have taken place in the next age, brought about by means which have not been satisfactorily explained. The crown became strictly hereditary, the governors of districts took the appellation of earls, the whole kingdom was subjected to a feudal tenure; the Anglo-Norman laws, tribunals, local and municipal magistracies were introduced as far as the royal influence could prevail; above all a surprising number of families, chiefly Norman, but some of Saxon or Flemish descent, settled upon estates granted by the kings of Scotland, and became the founders of its aristocracy. It was, as truly as some time afterwards in Ireland, the encroachment of a Gothic and feudal polity upon the inferior civilization of the Celts, though accomplished with far less resistance, and not quite so slowly. Yet the Highland tribes long adhered to their ancient usages; nor did the laws of English origin obtain in some other districts two or three centuries after their establishment on both sides of the Forth.[1]

It became almost a necessary consequence from this adoption of the feudal system, and assimilation to the English institutions, that the kings of Scotland would have their general council or parliament upon nearly the same model as that of the Anglo-Norman sovereigns they so studiously imitated. If the statutes ascribed to William the Lion, contemporary with our Henry II., are genuine, they were enacted, as we should expect to find, with the concurrence of the bishops, abbots, barons, and other good men (probi homines) of the land; meaning doubtless the inferior tenants in capite.[2] These laws indeed are questionable, and there is a great want of unequivocal records till almost the end of the thirteenth century. The representatives of boroughs are first distinctly mentioned in 1326, under Robert I.; though some have been of opinion that vestiges of their appearance in parliament may be traced higher; but they are not enumerated among the classes present in one held in 1315.[3] In the ensuing reign of David II., the three estates of the realm are expressly mentioned as the legislative advisers of the crown. (Dalrymple, ii. 241. Wight, 26.)

A Scots parliament resembled an English one in the mode of convocation, in the ranks that composed it, in the enacting powers of the king, and the necessary consent of the three estates; but differed in several very important respects. No freeholders, except tenants in capite, had ever any right of suffrage; which may, not improbably, have been in some measure owing to the want of that Anglo-Saxon institution, the county-court. These feudal tenants of the crown came in person to parliament, as they did in England till the reign of Henry

[1] Id. 500. et post. Dalrymple's Annals of Scotland, 28, 30, &c.
[2] Chalmers, 741. Wight's Law of Election in Scotland, 28.
[3] Id. 25. Dalrymple's Annals, i. 139. 235. 283.; ii. 55. 116. Chalmers, 743. Wight thinks they might perhaps only have had a voice in the imposition of taxes.

III., and sat together with the prelates and barons in one chamber. A prince arose in Scotland in the first part of the fifteenth century, resembling the English Justinian in his politic regard to strengthening his own prerogative and to maintaining public order. It was enacted by a law of James I., in 1427, that the smaller barons and free tenants "need not to come to parliament, so that of every sheriffdom there be sent two or more wise men, chosen at the head court," to represent the rest. These were to elect a speaker, through whom they were to communicate with the king and other estates.[1] This was evidently designed as an assimilation to the English house of commons. But the statute not being imperative, no regard was paid to this permission; and it is not till 1587 that we find the representation of the Scots counties finally established by law; though one important object of James's policy was never attained, the different estates of parliament having always voted promiscuously, as did the spiritual and the temporal lords in England.

But no distinction between the national councils of the two kingdoms was more essential than what appears to have been introduced into the Scots parliament under David II. In the year 1367 a parliament having met at Scone, a committee was chosen by the three estates, who seem to have had full powers delegated to them, the others returning home on account of the advanced season. The same was done in one held next year, without any assigned pretext. But in 1369 this committee was chosen only to prepare all matters determinable in parliament, or fit to be therein treated for the decision of the three estates on the last day but one of the session.[2] The former scheme appeared possibly, even to those careless and unwilling legislators, too complete an abandonment of their function. But even modified as it was in 1369, it tended to devolve the whole business of parliament on this elective committee, subsequently known by the appellation of lords of the articles. It came at last to be the general practice, though some exceptions to this rule may be found, that nothing was laid before parliament without their previous recommendation; and there seems reason to think, that in the first parliament of James I., in 1424, such full powers were delegated to the committee as had been granted before in 1367 and 1368, and that the three estates never met again to sanction their resolutions. (Wight, 62. 65.) The preparatory committee is not uniformly mentioned in the preamble of statutes made during the reign of this prince and his two next successors; but there may be no reason to infer from thence that it was not appointed. From the reign of James IV. the lords of articles are regularly named in the records of every parliament. (Id. 69.)

It is said that a Scots parliament, about the middle of the fifteenth century, consisted of near one hundred and ninety persons. (Pinkerton, i. 373.) We do not find however that more than half this number usually attended. A list of those present in 1472 gives but fourteen bishops and abbots, twenty-two earls and barons, thirty-four lairds or lesser tenants in capite, and eight deputies of boroughs. (Id. 360.)

[1] Statutes of Scotland, 1427. Pinkerton's Hist. of Scotland, i. 120. Wight, 30.
[2] Dalrymple, Annals, ii. 261. Stuart on Public Law of Scotland, 344. Robertson's Hist. of Scotland, i. 841.

The royal boroughs entitled to be represented in parliament were above thirty; but it was a common usage to choose the deputies of other towns as their proxies. (Pinkerton, i. 372.) The great object with them as well as with the lesser barons, was to save the cost and trouble of attendance. It appears indeed that they formed rather an insignificant portion of the legislative body. They are not named as consenting parties in several of the statutes of James III.; and it seems that on some occasions they had not been summoned to parliament, for an act was passed in 1504, "that the commissaries and headsmen of the burghs be warned when taxes or constitutions are given, to have their advice therein, as one of the three estates of the realm." (Id. ii. 53.) This however is an express recognition of their right, though it might have been set aside by an irregular exercise of power.

It was a natural result from the constitution of a Scots parliament, together with the general state of society in that kingdom, that its efforts were almost uniformly directed to augment and invigorate the royal authority. Their statutes afford a remarkable contrast to those of England in the absence of provisions against the exorbitancies of prerogative.[1] Robertson has observed that the kings of Scotland, from the time at least of James I., acted upon a steady system of repressing the aristocracy; and though this has been called too refined a supposition, and attempts have been made to explain otherwise their conduct, it seems strange to deny the operation of a motive so natural, and so readily to be inferred from their measures. The causes so well pointed out by this historian, and some that might be added; the defensible nature of great part of the country; the extensive possessions of some powerful families; the influence of feudal tenure and Celtic clanship; the hereditary jurisdictions, hardly controlled, even in theory, by the supreme tribunals of the crown; the custom of entering into bonds of association for mutual defence; the frequent minorities of the reigning princes; the necessary abandonment of any strict regard to monarchical supremacy, during the struggle for independence against England; the election of one great nobleman to the crown and its devolution upon another; the residence of the two first of the Stuart name in their own remote domains; the want of any such effective counterpoise to the aristocracy as the sovereigns of England possessed in its yeomanry and commercial towns; placed the kings of Scotland in a situation which neither for their own nor their people's interest they could be

[1] In a statute of James II. (1440) "the three estates conclude *that it is speedful* that our sovereign lord the king ride throughout the realm incontinent as shall be seen to the council where any rebellion, slaughter, burning, robbery, outrage, or theft has happened," &c. Statutes of Scotland, ii. 32. Pinkerton (i. 192.), leaving out the words in italics, has argued on false premises. "In this singular decree we find the legislative body regarding the king in the modern light of a chief magistrate, bound equally with the meanest subject to obedience to the laws," &c. It is evident that the estates spoke in this instance as counsellors, not as legislators. That is merely an oversight of a very well-informed historian, who is by no means in the trammels of any political theory.

A remarkable expression, however, is found in a statute of the same king, in 1450; which enacts that any man rising in war against the king, or receiving such as have committed treason, or holding houses against the king, or assaulting castles or places where the king's power shall happen to be, *without the consent of the three estates*, shall be punished as a traitor. Pinkerton, i. 213. I am inclined to think that the legislators had in view the possible recurrence of what had very lately happened, that an ambitious cabal might get the king's person into their power. The peculiar circumstances of Scotland are to be taken into account when we consider these statutes, which are not to be looked at as mere insulated texts.

expected to endure. But an impatience of submitting to the insolent and encroaching temper of their nobles drove James I., (before whose time no settled scheme of reviving the royal authority seems to have been conceived) and his two next descendants into some courses which, though excused or extenuated by the difficulties of their position, were rather too precipitate and violent, and redounded at least to their own destruction. The reign of James IV., from his accession in 1488 to his unhappy death at Flodden, in 1513, was the first of tolerable prosperity; the crown having by this time obtained no inconsiderable strength, and the course of law being somewhat more established, though the aristocracy were abundantly capable of withstanding any material encroachment upon their privileges.

Though subsidies were of course occasionally demanded, yet from the poverty of the realm, and the extensive domains which the crown retained, they were much less frequent than in England, and thus one principal source of difference was removed; nor do we read of any opposition in parliament to what the lords of articles thought fit to propound. Those who disliked the government stood aloof from such meetings, where the sovereign was in his vigour, and had sometimes crushed a leader of faction by a sudden stroke of power; confident that they could better frustrate the execution of laws than their enactment, and that questions of right and privilege could never be tried so advantageously as in the field. Hence it is, as I have already observed, that we must not look to the statute-book of Scotland for many limitations of monarchy. Even in one of James II., which enacts that none of the royal domains shall for the future be alienated, and that the king and his successors shall be sworn to observe this law, it may be conjectured that a provision rather derogatory in semblance to the king's dignity was introduced by his own suggestion, as an additional security against the importunate solicitations of the aristocracy whom the statute was designed to restrain. (Pinkerton, i. 234.) The next reign was the struggle of an imprudent, and, as far as his means extended, despotic prince, against the spirit of his subjects. In a parliament of 1487, we find I think, almost a solitary instance of a statute that appears to have been directed against some illegal proceedings of the government. It is provided that all civil suits shall be determined by the ordinary judges, and not before the king's council. (Statutes of Scotland, ii. 177.) James III. was killed the next year in attempting to oppose an extensive combination of the rebellious nobility. In the reign of James IV., the influence of the aristocracy shows itself rather more in legislation; and two peculiarities deserve notice, in which, as it is said, the legislative authority of a Scots parliament was far higher than that of our own. They were not only often consulted about peace or war, which in some instances was the case in England, but, at least in the sixteenth century, their approbation seems to have been necessary. (Pinkerton, ii. 266.) This, though not consonant to our modern notions, was certainly no more than the genius of the feudal system and the character of a great deliberative council might lead us to expect; but a more remarkable singularity was, that what had been propounded by the lords of articles, and received the ratification of the three estates, did not require the king's consent to give it complete

validity. Such at least is said to have been the Scots constitution in the time of James VI.; though we may demand very full proof of such an anomaly, which the language of their statutes, expressive of the king's enacting power, by no means leads us to infer.[1]

The kings of Scotland had always their aula or curia regis, claiming a supreme judicial authority, at least in some causes, though it might be difficult to determine its boundaries, or how far they were respected. They had also bailiffs to administer justice in their own domains, and sheriffs in every county for the same purpose, wherever grants of regality did not exclude their jurisdiction. These regalities were hereditary and territorial; they extended to the infliction of capital punishment; the lord possessing them might reclaim or replevie (as it was called, from the surety he was obliged to give that he would himself do justice) any one of his vassals who was accused before another jurisdiction. The barons, who also had cognisance of most capital offences, and the royal boroughs, enjoyed the same privilege. An appeal lay, in civil suits, from the baron's court to that of the sheriff or lord of regality, and ultimately to the parliament, or to a certain number of persons, to whom it delegated its authority.[2] This appellant jurisdiction of parliament, as well as that of the king's privy council, which was original, came, by a series of provisions from the year 1425 to 1532, into the hands of a supreme tribunal thus gradually constituted in its present form, the court of session. It was composed of fifteen judges, half of whom, besides the president, were at first churchmen, and soon established an entire subordination of the local courts in all civil suits. But it possessed no competence in criminal proceedings; the hereditary jurisdictions remained unaffected for some ages, though the king's two justiciaries, replaced afterwards by a court of six judges, went their circuits even through those counties wherein charters of regality had been granted. Two remarkable innovations seem to have accompanied, or to have been not far removed in time from, the first formation of the court of session; the discontinuance of juries in civil causes, and the adoption of so many principles from the Roman law as have given the jurisprudence of Scotland a very different character from our own.[3]

In the reign of James V. it might appear probable that by the influence of laws favourable to public order, better enforced through the council and court of session than before, by the final subjugation of the house of Douglas and of the earls of Ross in the North, and some slight increase of wealth in the towns, conspiring with the general tendency of the sixteenth century throughout Europe, the feudal spirit would be weakened and kept under in Scotland, or display itself only in a parliamentary resistance to what might become in its turn dangerous, the encroachments of arbitrary power. But immediately afterwards a new and unexpected impulse was given; religious zeal, so blended with the ancient spirit of aristocratic independence that the two motives are scarcely distinguishable, swept before it in the first whirlwind almost every vestige of the royal sovereignty. The Roman

[1] Pinkerton, ii. 400. Laing, iii. 32.
[2] Kaims's Law Tracts. Pinkerton, i. 151. et alibi. Stuart on Public Law of Scotland.
[3] Kaims's Law Tracts. Pinkerton's Hist. of Scotland, i. 117. 237. 388.; ii. 313. Robertson, i. 43. Stuart on Law of Scotland.

catholic religion was abolished with the forms indeed of a parliament, but of a parliament not summoned by the crown, and by acts that obtained not its assent. The Scots church had been immensely rich; its riches had led, as every where else, to neglect of duties and dissoluteness of life; and these vices had met with their usual punishment in the people's hatred.[1] The reformed doctrines gained a more rapid and general ascendency than in England, and were accompanied with a more strenuous and uncompromising enthusiasm. It is probable that no sovereign retaining a strong attachment to the ancient creed would long have been permitted to reign; and Mary is entitled to every presumption, in the great controversy that belongs to her name, that can reasonably be founded on this admission. But, without deviating into that long and intricate discussion, it may be given as the probable result of fair inquiry, that to impeach the characters of most of her adversaries would be a far easier task to the historian than to exonerate her own.[2]

The history of Scotland from the reformation assumes a character, not only unlike that of preceding times, but to which there is no parallel in modern ages. It became a contest, not between the crown and the feudal aristocracy as before, nor between the assertors of prerogative and of privilege, as in England, nor between the possessors of established power and those who deemed themselves oppressed by it, as is the usual source of civil discord, but between the temporal and spiritual authorities, the crown and the church; that in general supported by the legislature, this sustained by the voice of the people. Nothing of this kind, at least in any thing like so great a degree, has occurred in other protestant countries; the Anglican church being, in its original constitution, bound up with the state as one of its integrant parts, but subordinate to the whole; and the ecclesiastical order in the

[1] Robertson, i. 149. M'Crie's Life of Knox, p. 15. At least one half of the wealth of Scotland was in the hands of the clergy, chiefly of a few individuals. Ibid.

[2] I have read a good deal on this celebrated controversy; but, where so much is disputed, it is not easy to form an opinion on every point. But, upon the whole, I think there are only two hypotheses that can be advanced with any colour of reason. The first is, that the murder of Darnley was projected by Bothwell, Maitland, and some others, without the queen's express knowledge, but with a reliance on her passion for the former, which would lead her both to shelter him from punishment, and to raise him to her bed; and that, in both respects, this expectation was fully realised by a criminal connivance at the escape of one whom she must believe to have been concerned in her husband's death, and by a still more infamous marriage with him. This, it appears to me, is a conclusion that may be drawn by reasoning on admitted facts, according to the common rules of presumptive evidence. The second supposition is, that she had given a previous consent to the assassination. This is rendered probable by several circumstances, and especially by the famous letters and sonnets, the genuineness of which has been so warmly disputed. I must confess that they seem to me authentic, and that Mr. Laing's dissertation on the murder of Darnley has rendered Mary's innocence, even as to participation in that crime, an untenable proposition. No one of any weight, I believe, has asserted it since his time, except Dr. Lingard, who manages the evidence with his usual adroitness, but by admitting the general authenticity of the letters, qualified by a mere conjecture of interpolation, has given up what his predecessors deemed the very key of the citadel.

I shall dismiss a subject so foreign to my purpose, with remarking a fallacy which affects almost the whole argument of Mary's most strenuous advocates. They seem to fancy that, if the earls of Murray and Morton, and secretary Maitland of Lethington, can be proved to have been concerned in Darnley's murder, the queen herself is at once absolved. But it is generally agreed that Maitland was one of those who conspired with Bothwell for this purpose; and Morton, if he were not absolutely consenting, was by his own acknowledgment at his execution apprised of the conspiracy. With respect to Murray indeed there is not a shadow of evidence, nor had he any probable motive to second Bothwell's schemes; but, even if his participation were presumed, it would not alter in the slightest degree the proofs as to the queen.

kingdoms and commonwealths of the continent being either destitute of temporal authority or at least subject to the civil magistrate's supremacy.

Knox, the founder of the Scots' reformation, and those who concurred with him, both adhered to the theological system of Calvin, and to the scheme of polity he had introduced at Geneva, with such modifications as became necessary from the greater scale on which it was to be practised. Each parish had its minister, lay-elder, and deacon, who held their kirk-session for spiritual jurisdiction and other purposes; each ecclesiastical province its synod of ministers and delegated elders presided over by a superintendent; but the supreme power resided in the general assembly of the Scots' church, constituted of all ministers of parishes, with an admixture of delegated laymen, to which appeals from inferior judicatories lay, and by whose determinations or canons the whole were bound. The superintendents had such a degree of episcopal authority as seems implied in their name, but concurrently with the parochial ministers, and in subordination to the general assembly; the number of these was designed to be ten, but only five were appointed.[1] This form of church polity was set up in 1560; but according to the irregular state of things at that time in Scotland, though fully admitted and acted upon, it had only the authority of the church, with no confirmation of parliament; which seems to have been the first step of the former towards the independency it came to usurp. Meanwhile it was agreed that the Roman catholic prelates, including the regulars, should enjoy two thirds of their revenues, as well as their rank and seats in parliament; the remaining third being given to the crown, out of which stipends should be allotted to the protestant clergy. Whatever violence may be imputed to the authors of the Scots' reformation, this arrangement seems to display a moderation which we should vainly seek in our own. The new church was however but inadequately provided for; and perhaps we may attribute some part of her subsequent contumacy and encroachment on the state to the exasperation occasioned by the latter's parsimony, or rather rapaciousness, in the distribution of ecclesiastical estates.[2]

It was doubtless intended by the planners of a presbyterian model, that the bishoprics should be extinguished by the death of the possessors, and their revenues be converted, partly to the maintainance of the clergy, partly to other public interests. But it suited better the men in power to keep up the old appellations for their own benefit. As the catholic prelates died away, they were replaced by protestant ministers, on private compacts to alienate the principal part of the revenues to those through whom they were appointed. After some hesitation, a convention of the church, in 1572, agreed to recognise these bishops, until the king's majority and a final settlement by the legislature, and

[1] Spottiswood's Church Hist. 152. M'Crie's Life of Knox, ii. 6. Life of Melville, i. 143. Robertson's Hist. of Scotland. Cook's Hist. of the Reformation in Scotland. These three modern writers leave, apparently, little to inquire as to this important period of history; the first with an intenseness of sympathy, that enhances our interest, though it may not always command our approbation; the two last with a cooler and more philosophical impartiality.

[2] M'Crie's Life of Knox, ii, 197. et alibi. Cook, iii. 308. According to Robertson, i. 291., the whole revenue of the protestant church, at least in Mary's reign, was but 24,000 pounds Scots, which seems almost incredible.

to permit them a certain portion of jurisdiction, though not greater than that of the superintendent, and equally subordinate to the general assembly. They were not consecrated; nor would the slightest distinction of order have been endured by the church. Yet even this moderated episcopacy gave offence to ardent men, led by Andrew Melville, the second name to Knox in the ecclesiastical history of Scotland; and, notwithstanding their engagement to leave things as they were till the determination of parliament, the general assembly soon began to restrain the bishops by their own authority, and finally to enjoin them, under pain of excommunication, to lay down an office which they voted to be destitute of warrant from the word of God, and injurious to the church. Some of the bishops submitted to this decree; others, as might be expected, stood out in defence of their dignity, and were supported both by the king and by all who conceived that the supreme power of Scotland, in establishing and endowing the church, had not constituted a society independent of the commonwealth. A series of acts in 1584, at a time when the court had obtained a temporary ascendant, seemed to restore the episcopal government in almost its pristine lustre. But the popular voice was loud against episcopacy; the prelates were discredited by their simoniacal alienations of church-revenues, and by their connexion with the court; the king was tempted to annex most of their lands to the crown by an act of parliament in 1587; Adamson, archbishop of St. Andrews, who had led the episcopal party, was driven to a humiliating retractation before the general assembly; and, in 1592, the sanction of the legislature was for the first time obtained to the whole scheme of presbyterian polity; and the laws of 1584 were for the most part abrogated.

The school of Knox, if so we may call the early presbyterian ministers of Scotland, was full of men breathing their master's spirit; acute in disputation, eloquent in discourse, learned beyond what their successors have been, and intensely zealous in the cause of reformation. They wielded the people at will; who, except in the Highlands, threw off almost with unanimity the old religion, and took alarm at the slightest indication of its revival. Their system of local and general assemblies infused, together with the forms of a republic, its energy and impatience of exterior control, combined with the concentration and unity of purpose that belongs to the most vigorous government. It must be confessed that the unsettled state of the kingdom, the faults and weakness of the regents Lennox and Morton, the inauspicious beginning of James's personal administration under the sway of unworthy favourites, the real perils of the reformed church, gave no slight pretext for the clergy's interference with civil policy. Not merely in their representative assemblies, but in the pulpits, they perpetually remonstrated, in no guarded language, against the misgovernment of the court, and even the personal indiscretions of the king. This they pretended to claim as a privilege beyond the restraint of law. Andrew Melville having been summoned before the council in 1584, to give an account of some seditious language alleged to have been used by him in the pulpit, declined its jurisdiction on the ground that he was only responsible, in the first instance, to his presbytery for words so spoken, of which the king and council could not judge without violating the im-

munities of the church.' Precedents for such an immunity it would not have been difficult to find; but they must have been sought in the archives of the enemy. It was rather early for the new republic to emulate the despotism she had overthrown. Such, however, is the uniformity with which the same passions operate on bodies of men in similar circumstances; and so greedily do those, whose birth has placed them far beneath the possession of power, intoxicate themselves with its unaccustomed enjoyments. It has been urged in defence of Melville, that he only denied the competence of a secular tribunal in the first instance; and that, after the ecclesiastical forum had pronounced on the spiritual offence, it was not disputed that the civil magistrate might vindicate his own authority.[1] But not to mention that Melville's claim, as I understand it, was to be judged by his presbytery in the first instance, and ultimately by the general assembly, from which, according to the presbyterian theory, no appeal lay to a civil court; it is manifest that the government would have come to a very disadvantageous conflict with a man, to whose defence the ecclesiastical judicature had already pledged itself. For in the temper of those times it was easy to foresee the determination of a synod or presbytery.

James however and his counsellors were not so feeble as to endure this open renewal of those extravagant pretensions which Rome had taught her priesthood to assert. Melville fled to England; and a parliament that met the same year sustained the supremacy of the civil power with that violence and dangerous latitude of expression so frequent in the Scots' statute-book. It was made treason to decline the jurisdiction of the king or council in any matter, to seek the diminution of the power of any of the three estates of parliament, which struck at all that had been done against episcopacy, to utter, or to conceal, when heard from others in sermons or familiar discourse, any false or slanderous speeches to the reproach of the king, his council, or their proceedings, or to the dishonour of his parents and progenitors, or to meddle in the affairs of state. It was forbidden to treat or consult on any matter of state, civil or ecclesiastical, without the king's express command; thus rendering the general assembly for its chief purposes, if not its existence, altogether dependent on the crown. Such laws not only annihilated the pretended immunities of the church, but went very far to set up that tyranny, which the Stuarts afterwards exercised in Scotland till their expulsion. These were in part repealed, so far as affected the church, in 1592; but the crown retained the exclusive right of convening its general assembly, to which the presbyterian hierarchy still gives but an evasive and reluctant obedience. (M'Crie's Life of Melville. Robertson. Spottiswood.)

These bold demagogues were not long in availing themselves of the advantages which they had obtained in the parliament of 1592, and through the troubled state of the realm. They began again to intermeddle with public affairs, the administration of which was sufficiently open to censure. This licence brought on a new crisis in 1596. Black,

[1] M'Crie's Life of Melville, i. 287. 296. It is impossible to think without respect of this most powerful writer, before whom there are few living controversialists that would not tremble; but his presbyterian Hildebrandism is a little remarkable in this age.

one of the ministers of St. Andrews, inveighing against the government from the pulpit, painted the king and queen, as well as their council, in the darkest colours, as dissembling enemies to religion. James, incensed at this attack, caused him to be summoned before the privy-council. The clergy decided to make common cause with the accused. The council of the church, a standing committee lately appointed by the general assembly, enjoined Black to decline the jurisdiction. The king by proclamation directed the members of this council to retire to their several parishes. They resolved, instead of submitting, that since they were convened by the warrant of Christ, in a most needful and dangerous time, to see unto the good of the church, they should obey God rather than man. The king offered to stop the proceedings, if they would but declare that they did not decline the civil jurisdiction absolutely, but only in the particular case, as being one of slander, and consequently of ecclesiastical competence. For Black had asserted before the council, that speeches delivered in the pulpits, although alleged to be treasonable, could not be judged by the king, until the church had first taken cognisance thereof. But these ecclesiastics, in the full spirit of the thirteenth century, determined by a majority not to recede from their plea. Their contest with the court soon excited the populace of Edinburgh, and gave rise to a tumult, which, whether dangerous or not to the king, was what no government could pass over without utter loss of authority.

It was in church assemblies alone that James found opposition. His parliament, as had invariably been the case in Scotland, went readily into all that was proposed to them; nor can we doubt that the gentry must for the most part have revolted from these insolent usurpations of the ecclesiastical order. It was ordained in parliament, that every minister should declare his submission to the king's jurisdiction in all matters civil and criminal; that no ecclesiastical judicatory should meet without the king's consent, and that a magistrate might commit to prison any minister reflecting in his sermons on the king's conduct. He had next recourse to an instrument of power more successful frequently than intimidation, and generally successful in conjunction with it; gaining over the members of the general assembly, some by promises, some by exciting jealousies, till they surrendered no small portion of what had passed for the privileges of the church. The crown obtained by their concession, which then seemed almost necessary to confirm what the legislature had enacted, the right of convoking assemblies, and of nominating ministers in the principal towns. James followed up this victory by a still more important blow. It was enacted that fifty-one ministers, on being nominated by the king to titular bishoprics and other prelacies, might sit in parliament as representatives of the church. This seemed justly alarming to the zealots of parity; nor could the general assembly be brought to acquiesce without such very considerable restrictions upon these suspicious commissioners, by which name they prevailed to have them called, as might in some measure afford security against the revival of that episcopal domination, towards which the endeavours of the crown were plainly directed. But the king paid little regard to these regulations; and thus the name and parliamentary station of bishops were restored in

Scotland after only six years from their abolition. (Spottiswood. Robertson. M'Crie.)

A king like James, not less conceited of his wisdom than full of the dignity of his station, could not avoid contracting that insuperable aversion to the Scottish presbytery, which he expressed in his Basilicon Doron, before his accession to the English throne, and more vehemently on all occasions afterwards. He found a very different race of churchmen, well trained in the supple school of courtly conformity, and emulous flatterers both of his power and his wisdom. The ministers of Edinburgh had been used to pray that God would turn his heart. Whitgift, at the conference of Hampton Court, falling on his knees, exclaimed, that he doubted not his majesty spoke by the special grace of God. It was impossible that he should not redouble his endeavours to introduce so convenient a system of ecclesiastical government into his native kingdom. He began, accordingly, to prevent the meetings of the general assembly by continued prorogations. Some hardy presbyterians ventured to assemble by their own authority; which the lawyers construed into treason. The bishops were restored by parliament, in 1606, to a part of their revenues; the act annexing these to the crown being repealed. They were appointed by an ecclesiastical convention, more subservient to the crown than formerly, to be perpetual moderators of provincial synods. The clergy still gave way with reluctance; but the crown had an irresistible ascendency in parliament; and in 1610 the episcopal system was thoroughly established. The powers of ordination, as well as jurisdiction, were solely vested in the prelates; a court of high commission was created on the English model; and, though the general assembly of the church still continued, it was merely as a shadow, and almost mockery, of its original importance. The bishops now repaired to England for consecration; a ceremony deemed essential in the new school that now predominated in the Anglican church; and this gave a final blow to the polity in which the Scottish reformation had been founded.[1] With far more questionable prudence, James, some years afterwards, forced upon the people of Scotland what were called the five articles of Perth, reluctantly adopted by a general assembly held there in 1617. These were matters of ceremony, such as the posture of kneeling in the eucharist, the rite of confirmation, and the observance of certain holidays; but enough to alarm a nation fanatically abhorrent of every approximation to the Roman worship, and already incensed by what they deemed the corruption and degradation of their church. (Laing, 74. 89.)

That church, if indeed it preserved its identity, was wholly changed in character; and became as much distinguished in its episcopal form by servility and corruption as during its presbyterian democracy by faction and turbulence. The bishops at its head, many of them abhorred by their own countrymen as apostates and despised for their vices, looked for protection to the sister church of England in its pride and triumph. It had long been the favourite project oft he court, as it naturally was of the Anglican prelates, to assimilate in all respects the two establishments. That of Scotland still wanted one essential cha-

racteristic, a regular liturgy. But in preparing what was called the service book, the English model was not closely followed; the variations having all a tendency towards the Romish worship. It is far more probable that Laud intended these to prepare the way for a similar change in England, than that, as some have surmised, the Scottish bishops, from a notion of independence, chose thus to distinguish their own ritual. What were the consequences of this unhappy innovation, attempted with that ignorance of mankind which kings and priests, when left to their own guidance, usually display, it is here needless to mention. In its ultimate results, it preserved the liberties and overthrew the monarchy of England. In its more immediate effects, it gave rise to the national covenant of Scotland; a solemn pledge of unity and perseverance in a great public cause long since devised, when the Spanish armada threatened the liberties and religion of all Britain, but now directed against the domestic enemies of both. The episcopal government had no friends, even among those who served the king. To him it was dear by the sincerest conviction, and by its connexion with absolute power, still more close and direct than in England. But he had reduced himself to a condition where it was necessary to sacrifice his authority in the smaller kingdom, if he would hope to preserve it in the greater; and in this view he consented, in the parliament of 1641, to restore the presbyterian discipline of the Scottish church; an offence against his conscience (for such his prejudices led him to consider it) which he afterwards repented, when he discovered how absolutely it had failed of serving his interests.

In the great struggle with Charles against episcopacy, the encroachments of arbitrary rule, for the sake of which, in a great measure, he valued that form of church polity, were not overlooked; and the parliament of 1641 procured some essential improvements in the civil constitution of Scotland. Triennial sessions of the legislature, and other salutary reformations, were borrowed from their friends and coadjutors in England. But what was still more important, was the abolition of that destructive control over the legislature, which the crown had obtained through the lords of articles. These had doubtless been originally nominated by the several estates in parliament, solely to expedite the management of business, and relieve the entire body from attention to it. But, as early as 1561, we find a practice established, that the spiritual lords should choose the temporal, generally eight in number, who were to sit on this committee, and conversely; the burgesses still electing their own. To these it became usual to add some of the officers of state; and in 1617 it was established that eight of them should be on the list. Charles procured, without authority of parliament, a further innovation in 1633. The bishops chose eight peers, the peers eight bishops; and these appointed sixteen commissioners of shires and boroughs. Thus the whole power was devolved upon the bishops, the slaves and sycophants of the crown. The parliament itself met only on two days, the first and last of their pretended session, the one time in order to choose the lords of articles, the other to ratify what they proposed. (Wight, 69. et post.) So monstrous an anomaly could not long subsist in a high-spirited nation. This improvident assumption of power by low-born and odious men precipitated

their downfall, and made the destruction of the hierarchy appear the necessary guarantee for parliamentary independence, and the ascendant of the aristocracy. But, lest the court might, in some other form, regain this preliminary or initiative voice in legislation, which the experience of many governments has shown to be the surest method of keeping supreme authority in their hands, it was enacted in 1641, that each estate might choose lords of articles or not, at its discretion; but that all propositions should in the first instance be submitted to the whole parliament, by whom such only as should be thought fitting might be referred to the committee of articles for consideration.

This parliament, however, neglected to abolish one of the most odious engines that tyranny ever devised against public virtue, the Scots law of treason. It had been enacted by a statute of James I. in 1424, that all leasing-makers, and tellers of what might engender discord between the king and his people, should forfeit life and goods.[1] This act was renewed under James II. It was aimed at the factious aristocracy, who perpetually excited the people by invidious reproaches against the king's administration. But in 1584, a new antagonist to the crown having appeared in the presbyterian pulpits, it was determined to silence opposition by giving the statute of leasing-making, as it was denominated, a more sweeping operation. Its penalties were accordingly extended to such as should "utter untrue or slanderous speeches, to the disdain, reproach, and contempt of his highness, his parents and progenitors, or should meddle in the affairs of his highness or his estate." The "hearers and not reporters thereof" were subjected to the same punishment. It may be remarked that these Scots statutes are worded with a latitude never found in England, even in the worst times of Henry VIII. Lord Balmerino, who had opposed the court in the parliament of 1633, retained in his possession a copy of an apology intended to have been presented by himself and other peers in their exculpation, but from which they had desisted, in apprehension of the king's displeasure. This was obtained clandestinely, and in breach of confidence, by some of his enemies; and he was indicted on the statute of leasing-making, as having concealed a slander against his majesty's government. A jury was returned with gross partiality; yet so outrageous was the attempted violation of justice that Balmerino was only convicted by a majority of eight against seven. For in Scots juries a simple majority was sufficient, as it is still in all cases except treason. It was not thought expedient to carry this sentence into execution; but the kingdom could never pardon its government so infamous a stretch of power. (Laing, ibid.) The statute itself however seems not to have shared the same odium: we do not find any effort made for its repeal; and the ruling party in 1641, unfortunately, did not scruple to make use of its sanguinary provisions against their own adversaries. (Arnot's Crim. Trials, p. 122.)

The conviction of Balmerino is hardly more repugnant to justice than some other cases in the long reign of James VI. Eight years after the execution of the earl of Gowrie and his brother, one Sprot, a notary, having indiscreetly mentioned that he was in possession of

[1] Statutes of Scotland, vol. ii. p. 8. Pinkerton, i. 115. Laing, iii. 117.

letters, written by a person since dead, which evinced his participation in that mysterious conspiracy, was put to death for concealing them. Thomas Ross suffered, in 1618, the punishment of treason for publishing at Oxford a blasphemous libel, as the indictment calls it, against the Scots nation. (Arnot's Criminal Trials, p. 70.) I know not what he could have said worse than what their sentence against him enabled others to say, that, amidst a great vaunt of christianity and civilization, they took away men's lives by such statutes, and such constructions of them, as could only be paralleled in the annals of the worst tyrants. By an act of 1584, the privy council were empowered to examine an accused party on oath; and, if he declined to answer any question, it was held denial of their jurisdiction, and amounted to a conviction of treason. This was experienced by two jesuits, Crighton and Ogilvy, in 1610 and 1615, the latter of whom was executed.[2] One of the statutes upon which he was indicted contained the singular absurdity of "annulling and rescinding every thing done, or hereafter to be done, in prejudice of the royal prerogative, in any time bygone or to come."

It was perhaps impossible that Scotland should remain indifferent in the great quarrel of the sister kingdom. But having set her heart upon two things incompatible in themselves from the outset, according to the circumstances of England, and both of them ultimately impracticable, the continuance of Charles on the throne and the establishment of a presbyterian church, she fell into a long course of disaster and ignominy, till she held the name of a free constitution at the will of a conqueror. Of the three most conspicuous among her nobility in this period, each died by the hand of the executioner; but the resemblance is in nothing besides; and the characters of Hamilton, Montrose, and Argyle are not less contrasted than the factions of which they were the leaders. Humbled and broken down, the people looked to the re-establishment of Charles II. on the throne, though brought about by the sternest minister of Cromwell's tyranny, not only as the augury of prosperous days, but as the obliteration of public dishonour.

They were miserably deceived in every hope. Thirty infamous years consummated the misfortunes and degradation of Scotland. Her factions have always been more sanguinary, her rulers more oppressive, her sense of justice and humanity less active, or at least shown less in public acts, than can be charged against England. The parliament of 1661, influenced by wicked statesmen and lawyers, left far behind the

[1] The Gowrie conspiracy is well known to be one of the most difficult problems in history. Arnot has given a very good account of it, p. 20., and shown its truth, which could not reasonably be questioned, whatever motive we may assign for it. He has laid stress on Logan's letters, which appear to have been unaccountably slighted by some writers. I have long had a suspicion, founded on these letters, that the earl of Bothwell, a daring man of desperate fortunes, was in some manner concerned in the plot, of which the earl of Gowrie and his brother were the instruments.

[2] Arnot, p. 67. 229.; State Trials, ii. 884. The prisoner was told that he was not charged for saying mass, nor for seducing the people to popery, nor for any thing that concerned his conscience; but for declining the king's authority, and maintaining treasonable opinions, as the statutes libelled on made it treason not to answer the king or his council in any matter which should be demanded.

It was one of the most monstrous iniquities of a monstrous jurisprudence, the Scots criminal law, to debar a prisoner from any defence inconsistent with the indictment; that is, he might deny a fact, but was not permitted to assert that, being true, it did not warrant the conclusion of guilt. Arnot, 354

royalist commons of London; and rescinded as null the entire acts of 1641, on the absurd pretext that the late king had passed them through force. The Scots' constitution fell back at once to a state little better than despotism. The lords of articles were revived, according to the same form of election as under Charles I. A few years afterwards the duke of Lauderdale obtained the consent of parliament to an act, that whatever the king and council should order respecting all ecclesiastical matters, meetings, and persons, should have the force of law. A militia, or rather army, of 22,000 men, was established, to march wherever the council should appoint, and the honour and safety of the king require. Fines to the amount of 85,000*l.*, an enormous sum in that kingdom, were imposed on the covenanters. The earl of Argyle brought to the scaffold by an outrageous sentence, his son sentenced to lose his life on such a construction of the ancient law against leasing-making as no man engaged in political affairs could be sure to escape, the worst system of constitutional laws administered by the worst men, left no alternative but implicit obedience or desperate rebellion.

The presbyterian church of course fell by the act which annulled the parliament wherein it had been established. Episcopacy revived, but not as it had once existed in Scotland; the jurisdiction of the bishops became unlimited; the general assemblies, so dear to the people, were laid aside.[1] The new prelates were odious as apostates, and soon gained a still more indelible title to popular hatred as persecutors. Three hundred and fifty of the presbyterian clergy (more than one third of the whole number) were ejected from their benefices.[2] Then began the preaching in conventicles, and the secession of the excited and exasperated multitude from the churches; and then ensued the ecclesiastical commission with its inquisitorial vigilance, its fines and corporal penalties, and the free quarters of the soldiery, with all that can be implied in that word. Then came the fruitless insurrection, and the fanatical assurance of success, and the certain discomfiture by a disciplined force, and the consternation of defeat, and the unbounded cruelties of the conqueror. And this went on with perpetual aggravation, or very rare intervals, through the reign of Charles; the tyranny of Lauderdale far exceeding that of Middleton, as his own fell short of the duke of York's. No part, I believe, of modern history for so long a period, can be compared for the wickedness of government to the Scots administration of this reign. In proportion as the laws grew more rigorous against the presbyterian worship, its followers evinced more steadiness; driven from their conventicles, they resorted, sometimes by night, to the fields, the woods, the mountains; and, as the troops were continually employed to disperse them, they came with arms which they were often obliged to use; and thus the hour, the place, the circumstance, deepened every impression, and bound up their faith with indissoluble associations. The same causes produced

[1] Laing, iv. 20. Kirkton, p. 141. "Whoso shall compare," he says, "this set of bishops with the old bishops established in the year 1612, shall find that these were but a sort of pigmies compared with our new bishops."

[2] Laing, iv. 32. Kirkton says 300; p. 149. These were what were called the young ministers, those who had entered the church since 1649. They might have kept their cures by acknowledging the authority of bishops.

a dark fanaticism, which believed the revenge of its own wrongs to be the execution of divine justice; and, as this acquired new strength by every successive aggravation of tyranny, it is literally possible that a continuance of the Stuart government might have led to something very like an extermination of the people in the western counties of Scotland. In the year 1676 letters of intercommuning were published; a writ forbidding all persons to hold intercourse with the parties put under its ban, or to furnish them with any necessary of life on pain of being reputed guilty of the same crime. But seven years afterwards, when the Cameronian rebellion had assumed a dangerous character, a proclamation was issued against all who had ever harboured or communed with rebels; courts were appointed to be held for their trial as traitors, which were to continue for the next three years. Those who accepted the test, a declaration of passive obedience repugnant to the conscience of the presbyterians and imposed in 1681, were excused from these penalties; and by this means they were eluded.

The enormities of this detestable government are far too numerous, even in species, to be enumerated in this slight sketch; and of course most instances of cruelty have not been recorded. The privy-council was accustomed to extort confessions by torture; that grim divan of bishops, lawyers, and peers sucking in the groans of each undaunted enthusiast, in hope that some imperfect avowal might lead to the sacrifice of other victims, or at least warrant the execution of the present. It is said that the duke of York, whose conduct in Scotland seems to efface those sentiments of pity and respect which other parts of his life might excite, used to assist himself on these occasions. (Laing, iv. 116.) One Mitchell having been induced, by a promise that his life should be spared, to confess an attempt to assassinate Sharp the primate, was brought to trial some years afterwards; when four lords of the council deposed on oath that no such assurance had been given him; and Sharp insisted upon his execution. The vengeance ultimately taken on this infamous apostate and persecutor, though doubtless in violation of what is justly reckoned an universal rule of morality, ought at least not to weaken our abhorrence of the man himself.

The test above mentioned was imposed by parliament in 1681, and contained, among other things, an engagement never to attempt any alteration of government in church or state. The earl of Argyle, son of him who had perished by an unjust sentence, and himself once before attainted by another, though at that time restored by the king, was still destined to illustrate the house of Campbell by a second martyrdom. He refused to subscribe the test without the reasonable explanation that he would not bind himself from attempting, in his station, any improvement in church or state. This exposed him to an accusation of leasing-making (the old mystery of iniquity in Scots law) and of treason. He was found guilty through the astonishing audacity of the crown lawyers and servility of the judges and jury. It is not perhaps certain that his immediate execution would have ensued; but no man ever trusted securely to the mercies of the Stuarts, and Argyle escaped in disguise by the aid of his daughter-in-law. The council proposed that this lady should be publicly whipped; but there was an excess of atrocity in the Scots on the court side, which no Englishman

could reach; and the duke of York felt as a gentleman upon such a suggestion. (Life of James II., i. 710.) The earl of Argyle was brought to the scaffold a few years afterwards on this old sentence; but after his unfortunate rebellion, which of course would have legally justified his execution.

The Cameronians, a party rendered wild and fanatical through intolerable oppression, published a declaration, wherein, after renouncing their allegiance to Charles, and expressing their abhorrence of murder on the score of religion, they announced their determination of retaliating, according to their power, on such privy-counsellors, officers in command, or others, as should continue to seek their blood. The fate of Sharp was thus before the eyes of all who emulated his crimes; and in terror the council ordered, that whoever refused to disown this declaration on oath, should be put to death in the presence of two witnesses. Every officer, every soldier, was thus intrusted with the privilege of massacre; the unarmed, the women and children, fell indiscriminately by the sword: and besides the distinct testimonies that remain of atrocious cruelty, there exists in that kingdom a deep traditional horror, the record, as it were, of that confused mass of crime and misery which has left no other memorial.[1]

A parliament summoned by James on his accession, with an intimation from the throne that they were assembled not only to express their own duty, but to set an example of compliance to England, gave, without the least opposition, the required proofs of loyalty. They acknowledged the king's absolute power, declared their abhorrence of any principle derogatory to it, professed an unreserved obedience in all cases, bestowed a large revenue for life. They enhanced the penalties against sectaries; a refusal to give evidence against traitors or other delinquents was made equivalent to a conviction of the same offence; it was capital to preach even in houses, or to hear preachers in the fields. The persecution raged with still greater fury in the first part of this feign. But the same repugnance of the episcopal party to the king's schemes for his own religion, which led to his remarkable change of policy in England, produced similar effects in Scotland. He had attempted to obtain from parliament a repeal of the penal laws and the test; but, though an extreme servility or a general intimidation made the nobility acquiesce in his propositions, and two of the bishops were gained over, yet the commissioners of shires and boroughs, who voting promiscuously in the house, had, when united, a majority over the peers, so firmly resisted every encroachment of popery, that it was necessary to try other methods than those of parliamentary enactment. After the dissolution the dispensing power was brought into play; the privy-council forbade the execution of the laws against the catholics; several of that religion were introduced to its board; the royal boroughs were deprived of their privileges, the king assuming the nomination of their chief magistrates, so as to throw the elections wholly into the hands of the crown. A declaration of indulgence, emanating from the king's absolute prerogative, relaxed the severity of the laws against

[1] Cloud of Witnesses, passim. De Foe's Hist. of Church of Scotland. Kirkton. Laing. Scott's notes in Minstrelsy of Scottish Border, &c. &c.

presbyterian conventicles, and, annulling the oath of supremacy and the test of 1681, substituted for them an oath of allegiance, acknowledging his power to be unlimited. He promised at the same time that, "he would use no force nor invincible necessity against any man on account of his persuasion, or the protestant religion, nor would deprive the possessors of lands formerly belonging to the church." A very intelligible hint that the protestant religion was to exist only by this gracious sufferance.

The oppressed presbyterians gained some respite by this indulgence, though instances of executions under the sanguinary statutes of the late reign are found as late as the beginning of 1688. But the memory of their sufferings was indelible; they accepted, but with no gratitude, the insidious mercy of a tyrant they abhorred. The Scots' conspiracy with the prince of Orange went forward simultaneously with that of England; it included several of the council, from personal jealousy, dislike of the king's proceedings as to religion, or anxiety to secure an indemnity they had little deserved in the approaching crisis. The people rose in different parts of Scotland; the Scots' nobility and gentry in London presented an address to the prince of Orange, requesting him to call a convention of the estates; and this irregular summons was universally obeyed.

The king was not without friends in this convention; but the whigs had from every cause a decided preponderance. England had led the way; William was on his throne; the royal government at home was wholly dissolved; and, after enumerating in fifteen articles the breaches committed on the constitution, the estates came to a resolution: "That James VII., being a professed papist, did assume the royal power, and acted as king, without ever taking the oath required by law, and had, by the advice of evil and wicked counsellors, invaded the fundamental constitution of the kingdom, and altered it from a legal limited monarchy to an arbitrary despotic power, and hath exerted the same to the subversion of the protestant religion, and the violation of the laws and liberties of the kingdom, whereby he hath forfaulted (forfeited) his right to the crown, and the throne has become vacant." It was evident that the English vote of a constructive abdication, having been partly grounded on the king's flight, could not without still greater violence be applied to Scotland; and consequently the bolder denomination of forfeiture was necessarily employed to express the penalty of his misgovernment. There was, in fact, a very striking difference in the circumstances of the two kingdoms. In the one, there had been illegal acts and unjustifiable severities; but it was, at first sight, no very strong case for national resistance, which stood rather on a calculation of expediency than an instinct of self-preservation or an impulse of indignant revenge. But in the other, it had been a tyranny, dark as that of the most barbarous ages; despotism, which in England was scarcely in blossom, had borne its bitter and its poisonous fruits: no word of slighter import than forfeiture could be chosen to denote the national rejection of the Stuart line.

A declaration and claim of rights was drawn up, as in England, together with the resolution that the crown be tendered to William and Mary, and descend afterwards in conformity with the limitations

enacted in the sister kingdom. This declaration excluded papists from the throne, and asserted the illegality of proclamations to dispense with statutes, of the inflicting capital punishment without jury, of imprisonment without special cause or delay of trial, of exacting enormous fines, of nominating the magistrates in boroughs, and several other violent proceedings in the two last reigns. These articles the convention challenged as their undoubted right, against which no declaration or precedent ought to operate. They reserved some other important grievances to be redressed in parliament. Upon this occasion, a noble fire of liberty shone forth to the honour of Scotland, amidst those scenes of turbulent faction or servile corruption which the annals of her parliament so perpetually displayed. They seemed emulous of English freedom, and were proud to place their own imperfect commonwealth on as firm a basis.

One great alteration in the state of Scotland was almost necessarily involved in the fall of the Stuarts. Their most conspicuous object had been the maintenance of the episcopal church; the line was drawn far more closely than in England; in that church were the court's friends, out of it were its opponents. Above all, the people were out of it, and in a revolution brought about by the people, their voice could not be slighted. It was one of the articles accordingly in the declaration of rights, that prelacy and precedence in ecclesiastical office were repugnant to the genius of a nation reformed by presbyters, and an unsupportable grievance which ought to be abolished. William, there is reason to believe, had offered to preserve the bishops, in return for their support in the convention. But this, not more happily for Scotland than for himself and his successors, they refused to give. No compromise, or even acknowledged toleration, was practicable in that country between two exasperated factions; but, if oppression was necessary, it was at least not on the majority that it ought to fall. But besides this, there was as clear a case of forfeiture in the Scots' episcopal church as in the royal family of Stuart. The main controversy between the episcopal and presbyterian churches was one of dry antiquarian criticism, little more interesting than those about the Roman senate, or the Saxon wittenagemot, nor perhaps more capable of decisive solution; it was at least one as to which the bulk of mankind are absolutely incapable of forming a rational judgment for themselves. But, mingled up as it had always been, and most of all in Scotland, with faction, with revolution, with power and emolument, with courage and devotion, and fear, and hate, and revenge, this arid dispute of pedants drew along with it the most glowing emotions of the heart, and the question became utterly out of the province of argument. It was very possible that episcopacy might be of apostolical institution; but for this institution houses had been burned and fields laid waste, and the gospel had been preached in wildernesses, and its ministers had been shot in their prayers, and husbands had been murdered before their wives, and virgins had been defiled, and many had died by the executioner, and by massacre, and in imprisonment, and in exile and slavery, and women had been tied to stakes on the sea-shore till the tide rose to overflow them, and some had been tortured and mutilated; it was a religion of the boots and the thumb-screw, which a good man

must be very cold-blooded indeed if he did not hate and reject from the hands which offered it. For, after all, it is much more certain that the Supreme Being abhors cruelty and persecution, than that he has set up bishops to have a superiority over presbyters.

It was however a serious problem at that time, whether the presbyterian church, proud and stubborn as she had formerly shown herself so, could be brought under a necessary subordination to the civil magistrate, and whether the more fanatical part of it, whom Cargill and Cameron had led on, would fall again into the ranks of social life. But here experience victoriously confuted these plausible apprehensions. It was soon perceived that the insanity of fanaticism subsides of itself, unless purposely heightened by persecution. The fiercer spirit of the sectaries was allayed by degrees; and, though vestiges of it may probably still be perceptible by observers, it has never, in a political sense, led to dangerous effects. The church of Scotland, in her general assemblies, preserves the forms, and affects the language, of the sixteenth century; but the Erastianism, against which she inveighs, secretly controls and paralyses her vaunted liberties; and she cannot but acknowledge that the supremacy of the legislature is like the collar of the watch-dog, the price of food and shelter, and the condition upon which alone a religious society can be endowed and established by any prudent commonwealth.[1] The judicious admixture of laymen in these assemblies, and, in a far greater degree, the perpetual intercourse with England, which has put an end to everything like sectarian bigotry, and even exclusive communion, in the higher and middling classes, are the principal causes of that remarkable moderation which for many years has characterized the successors of Knox and Melville.

The convention of estates was turned by an act of its own into a parliament, and continued to sit during the king's reign. This, which was rather contrary to the spirit of a representative government than to the Scots constitution, might be justified by the very unquiet state of the kingdom and the intrigues of the Jacobites. Many excellent statutes were enacted in this parliament, besides the provisions included in the declaration of rights; twenty-six members were added to the representation of the counties, the tyrannous acts of the two last reigns were repealed, the unjust attainders were reversed, the lords of articles were abolished. After some years, an act was obtained against wrongous imprisonment, still more effectual perhaps in some respects than that of the habeas corpus in England. The prisoner is to be released on bail within twenty-four hours on application to a judge, unless committed on a capital charge; and in that case must be brought

[1] The practice observed in summoning or dissolving the great national assembly of the church of Scotland, which, according to the presbyterian theory, can only be done by its own authority, is rather amusing: "The moderator dissolves the assembly in the name of the Lord Jesus Christ, the head of the church; and, by the same authority, appoints another to meet on a certain day of the ensuing year. The lord high commissioner then dissolves the assembly in the name of the king, and appoints another to meet on the same day." Arnot's History of Edinburgh, p. 269.

I am inclined to suspect, but with no very certain recollection of what I have been told, that Arnot has misplaced the order in which this is done, and that the lord high commissioner is the first to speak. In the course of a debate, however, no regard is paid to him, all speeches being addressed to the moderator.

to trial within sixty days. A judge refusing to give full effect to the act is declared incapable of public trust.

Notwithstanding these great improvements in the constitution, and the cessation of religious tyranny, the Scots are not accustomed to look back on the reign of William with much complacency. The regeneration was far from perfect; the court of session continued to be corrupt and partial; severe and illegal proceedings might sometimes be imputed to the council; and in one lamentable instance, the massacre of the Macdonalds in Glencoe, the deliberate crime of some statesmen tarnished not slightly the bright fame of their deceived master: though it was not for the adherents of the house of Stuart, under whom so many deeds of more extensive slaughter had been perpetrated, to fill Europe with their invectives against this military execution.[1] The episcopal clergy, driven out injuriously by the populace from their livings, were permitted after a certain time to hold them again in some instances under certain conditions; but William, perhaps almost the only consistent friend of toleration in his kingdoms, at least among public men, lost by this indulgence the affection of one party, without in the slightest degree conciliating the other.[2] The true cause, however, of the prevalent disaffection at this period was the condition of Scotland, an ancient, independent kingdom, inhabited by a proud, high-spirited people, relatively to another kingdom, which they had long regarded

[1] The king's instructions by no means warrant the execution, especially with all its circumstances of cruelty, but they contain one unfortunate sentence;—"If Maclean [sic] of Glencoe, and that tribe can be well separated from the rest, it will be a proper vindication of the public justice to extirpate that seat of thieves." This was written, it is to be remembered, while they were exposed to the penalties of the law for the rebellion. But the massacre would never have been perpetrated, if lord Breadalbane and the master of Stair, two of the worst men in Scotland, had not used the foulest arts to effect it. It is an apparent great reproach to the government of William, that they escaped with impunity: but political necessity bears down justice and honour. Laing, iv. 246. Carstares' State Papers.

[2] Those who took the oaths were allowed to continue in their churches without compliance with the presbyterian discipline, and many more who not only refused the oaths but prayed openly for James and his family. Carstares, p. 40. But in 1693 an act for settling the peace and quiet of the church ordains, that no person be admitted or continued to be a minister or preacher unless he have taken the oath of allegiance, and subscribed the assurance that he held the king to be de facto et de jure, and also the confession of faith; and that he owns and acknowledges presbyterian church-government to be the only government of this church, and that he will submit thereto and concur therewith, and will never endeavour, directly or indirectly, the prejudice or subversion thereof. Id. 715. Laing, iv 255.

This act seems not to have been strictly insisted upon; and the episcopal clergy, though their advocates did not forget to raise a cry of persecution, which was believed in England, are said to have been treated with singular favour. De Foe challenges them to show any one minister that ever was deposed for not acknowledging the church, if at the same time he offered to acknowledge the government and take the oaths; and says they have been often challenged on this head. Hist. of Church of Scotland, p. 319. In fact, a statute was passed in 1695, which confirmed all ministers who would qualify themselves by taking the oaths; and no less than 216 (according to Laing, iv. 259.) did so continue; nay, De Foe reckons 165 at the time of the union. P. 320.

The rigid presbyterians inveighed against any toleration, as much as they did against the king's authority over their own church. But the government paid little attention to their bigotry; besides the above-mentioned episcopal clergymen, those who seceded from the church, though universally Jacobites, and most dangerously so, were indulged with meeting-houses in all towns: and by an act of the queen, 10 Anne, c. 7., obtained a full toleration, on condition of praying for the royal family, with which they never complied. It was thought necessary to put them under some fresh restrictions in 1748, their zeal for the Pretender being notorious and universal, by an act 21 Geo. II. c. 34.; which has very properly been repealed after the motive for it had wholly ceased, and even at first was hardly reconcilable with the general principles of religious liberty; though it ill becomes those to censure it who vindicate the penal laws of Elizabeth against popery.

with enmity, still with jealousy; but to which, in despite of their theoretical equality, they were kept in subordination by an insurmountable necessity. The union of the two crowns had withdrawn their sovereign and his court; yet their government had been national, and on the whole with no great intermixture of English influence. Many reasons however might be given for a more complete incorporation, which had been the favourite project of James I., and was discussed, at least on the part of Scotland, by commissioners appointed in 1670. That treaty failed of making any progress; the terms proposed being such as the English parliament would never have accepted. At the revolution a similar plan was just hinted, and abandoned. Meanwhile, the new character that the English government had assumed rendered it more difficult to preserve the actual connexion. A king of both countries, especially by origin more allied to the weaker, might maintain some impartiality in his behaviour towards each of them. But, if they were to be ruled, in effect, nearly as two republics; that is, if the power of their parliaments should be so much enhanced as ultimately to determine the principal measures of state (which was at least the case in England), no one who saw their mutual jealousy, rising on one side to the highest exasperation, could fail to anticipate that some great revolution must be at hand; and that an union, neither federal nor legislative, but possessing every inconvenience of both, could not long be endured. The well known business of the Darien Company must have undeceived every rational man who dreamed of any alternative but incorporation or separation. The Scots parliament took care to bring on the crisis by the act of security in 1704. It was enacted that, on the queen's death without issue, the estates should meet to name a successor of the royal line, and a protestant; but that this should not be the same person who would succeed to the crown of England, unless during her majesty's reign conditions should be established to secure from English influence the honour and independence of the kingdom, the authority of parliament, the religion, trade, and liberty of the nation. This was explained to mean a free intercourse with the plantations, and the benefits of the navigation act. The prerogative of declaring peace and war was to be subjected for ever to the approbation of parliament, lest at any future time these conditions should be revoked.

Those who obtained the act of security were partly of the Jacobite faction, who saw in it the hope of restoring at least Scotland to the banished heir; partly of a very different description, whigs in principle, and determined enemies of the Pretender, but attached to their country, jealous of the English court, and determined to settle a legislative union on such terms as became an independent state. Such an union was now seen in England to be indispensable; the treaty was soon afterwards begun, and, after a long discussion of the terms between the commissioners of both kingdoms, the incorporation took effect on the 1st of May, 1707. It is provided by the articles of this treaty, confirmed by the parliaments, that the succession of the united kingdom shall remain to the princess Sophia, and the heirs of her body, being protestants; that all privileges of trade shall belong equally to both nations; that there shall be one great seal, and the same coin, weights, and measures; that the episcopal and presbyterian churches of England

and Scotland shall be for ever established, as essential and fundamental parts of the union; that the united kingdom shall be represented by one and the same parliament, to be called the parliament of Great Britain; that the number of peers for Scotland shall be sixteen, to be elected for every parliament by the whole body, and the number of representatives of the commons forty-five, two thirds of whom to be chosen by the counties, and one third by the boroughs; that the crown be restrained from creating any new peers of Scotland; that both parts of the united kingdom shall be subject to the same duties of excise, and the same customs on export and import; but that, when England raises two millions by a land-tax, 48,000*l.* shall be raised in Scotland, and in like proportion.

It has not been unusual for Scotsmen, even in modern times, while they cannot but acknowledge the expediency of an union, and the blessings which they have reaped from it, to speak of its conditions as less favourable than their ancestors ought to have claimed. For this however there does not seem much reason. The ratio of population would indeed have given Scotland about one eighth of the legislative body, instead of something less than one twelfth; but no government except the merest democracy is settled on the sole basis of numbers; and if the comparison of wealth and of public contributions was to be admitted, it may be thought that a country, which stipulated for itself to pay less than one fortieth of direct taxation, was not entitled to a much greater share of the representation than it obtained. Combining the two ratios of population and property, there seems little objection to this part of the union; and in general it may be observed of the articles of that treaty, what often occurs with compacts intended to oblige future ages, that they have rather tended to throw obstacles in the way of reformations for the substantial benefit of Scotland, than to protect her against encroachment and usurpation.

This however could not be securely anticipated in the reign of Anne; and, no doubt, the measure was an experiment of such hazard that every lover of his country must have consented in trembling, or revolted from it with disgust. No past experience of history was favourable to the absorption of a lesser state (at least where the government partook so much of the republican form) in one of superior power and ancient rivalry. The representation of Scotland in the united legislature was too feeble to give any thing like security against the English prejudices and animosities, if they should continue or revive. The church was exposed to the most apparent perils, brought thus within the power of a legislature so frequently influenced by one which held her not as a sister, but rather a bastard usurper of a sister's inheritance; and, though her permanence was guaranteed by the treaty, yet it was hard to say how far the legal competence of parliament might hereafter be deemed to extend, or at least how far she might be abridged of her privileges, and impaired in her dignity.[1] If very few of these mischiefs have

[1] Archbishop Tenison said, in the debates on the union, he thought the narrow notions of all churches had been their ruin, and that he believed the church of Scotland to be as true a protestant church as the church of England, though he could not say it was as perfect. Carstares, 759. This sort of language was encouraging; but the exclusive doctrine, or jus divinum, was sure to retain many advocates, and has always done so. Fortunately for Great Britain, it has not had the slightest effect on the laity in modern times.

resulted from the union, it has doubtless been owing to the prudence of our government, and chiefly to the general sense of right, and the diminution both of national and religious bigotry during the last century. But it is always to be kept in mind, as the best justification of those who came into so great a sacrifice of natural patriotism, that they gave up no excellent form of polity, that the Scots constitution had never produced the people's happiness, that their parliament was bad in its composition, and in practice little else than a factious and venal aristocracy; that they had before them the alternatives of their present condition, with the prospect of unceasing discontent, half suppressed by unceasing corruption, or of a more honourable, but very precarious, separation of the two kingdoms, the renewal of national wars and border-feuds, at a cost the poorer of the two could never endure, and at a hazard of ultimate conquest, which, with all her pride and bravery, the experience of the last generation had shown to be no impossible term of the contest.

The union closes the story of the Scots constitution. From its own nature, not more than from the gross prostitution with which a majority had sold themselves to the surrender of their own legislative existence, it was long odious to both parties in Scotland. An attempt to dissolve it by the authority of the united parliament itself was made in a very few years, and not very decently supported by the whigs against the queen's last ministry. But, after the accession of the house of Hanover, the Jacobite party displayed such strength in Scotland, that to maintain the union was evidently indispensable for the reigning family. That party comprised a large proportion of the superior classes, and nearly the whole of the episcopal church, which, though fallen, was for some years considerable in numbers. The national prejudices ran in favour of their ancient stock of kings, conspiring with the sentiment of dishonour attached to the union itself, and jealousy of some innovations which a legislature they were unwilling to recognise thought fit to introduce. It is certain that Jacobitism, in England little more, after the reign of George I., than an empty word, the vehicle of indefinite dissatisfaction in those who were never ready to encounter peril or sacrifice advantage for its affected principle, subsisted in Scotland as a vivid emotion of loyalty, a generous promptitude to act or suffer in its cause; and, even when all hope was extinct, clung to the recollections of the past, long after the very name was only known by tradition, and every feeling connected with it had been wholly effaced to the south of the Tweed. It is believed that some persons in that country kept up an intercourse with Charles Edward as their sovereign till his decease in 1787. They had given, forty years before, abundant testimonies of their activity to serve him. That rebellion is, in more respects than one, disgraceful to the British government; but it furnished an opportunity for a wise measure to prevent its recurrence, and to break down in some degree the aristocratical ascendency, by abolishing the hereditary jurisdictions which, according to the genius of the feudal system, were exercised by territorial proprietors under royal charter or prescription. Much, however, still remains to be done, in order to place that now wealthy and well-instructed people on a footing with the English, as to the just participation of political liberty; but what would

best conform to the spirit of the act of union might possibly sometimes contravene its letter.

CHAPTER XVIII.

ON THE CONSTITUTION OF IRELAND.

Ancient State of Ireland—Its Kingdoms and Chieftainships—Law of Tanistry and Gavel-kind—Rude State of Society—Invasion of Henry II.—Acquisitions of English Barons—Forms of English Constitution established—Exclusion of native Irish from them—Degeneracy of English Settlers—Parliament of Ireland—Disorderly State of the Island—The Irish regain part of their Territories—English Law confined to the Pale—Poyning's Law—Royal Authority revives under Henry VIII.—Resistance of Irish to Act of Supremacy—Protestant Church established by Elizabeth—Effects of this Measure—Rebellions of her Reign—Opposition in Parliament—Arbitrary Proceedings of Sir Henry Sidney—James I.—Laws against Catholics enforced—English Law established throughout Ireland—Settlements of English in Munster, Ulster, and other Parts—Injustice attending them—Constitution of Irish Parliament—Charles I. promises Graces to the Irish—Does not confirm them—Administration of Strafford—Rebellion of 1641*—Subjugation of Irish by Cromwell—Restoration of Charles II.—Act of Settlement—Hopes of Catholics under Charles and James—War of* 1689*, and final Reduction of Ireland—Penal Laws against Catholics—Dependence of Irish on English Parliament—Growth of a Patriotic Party in* 1753.—pp. 830–873.

THE antiquities of Irish history, imperfectly recorded, and rendered more obscure by controversy, seem hardly to belong to our present subject. But the political order or state of society among that people at the period of Henry II.'s invasion must be distinctly apprehended and kept in mind, before we can pass a judgment upon, or even understand, the course of succeeding events, and the policy of the English government in relation to that island.

It can hardly be necessary to mention (the idle traditions of a derivation from Spain having long been exploded) that the Irish are descended from one of those Celtic tribes, which occupied Gaul and Britain some centuries before the Christian era. Their language, however, is so far dissimilar from that spoken in Wales, though evidently of the same root, as to render it probable that the emigration, whether from this island or from Armorica, was in a remote age; while its close resemblance to that of the Scottish Highlanders, which hardly can be called another dialect, as unequivocally demonstrates a nearer affinity of the two nations. It seems to be generally believed, though the antiquaries are far from unanimous, that the Irish are the parent tribe, and planted their colony in Scotland since the commencement of our era.

About the end of the eighth century, some of those swarms of

Scandinavian descent which were poured out in such unceasing and irresistible multitudes on France and Britain began to settle on the coasts of Ireland. These colonists were known by the name of Ostmen, or men from the east, as in France they were called Normans from their northern origin. They occupied the sea-coast from Antrim easterly round to Limerick; and by them the principal cities of Ireland were built. They waged war for some time against the aboriginal Irish in the interior; but though better acquainted with the arts of civilized life, their inferiority in numbers caused them to fail at length in this contention; and the piratical invasions from their brethren in Norway becoming less frequent in the eleventh and twelfth centuries, they had fallen into a state of dependence on the native princes.

The island was divided into five provincial kingdoms, Leinster, Munster, Ulster, Connaught, and Meath; one of whose sovereigns was chosen king of Ireland in some general meeting, probably of the nobility or smaller chieftains and of the prelates. But there seems to be no clear tradition as to the character of this national assembly, though some maintain it to have been triennially held. The monarch of the island had tributes from the inferior kings, and a certain supremacy, especially in the defence of the country against invasion; but the constitution was of a federal nature, and each was independent in ruling his people, or in making war on his neighbours. Below the kings were the chieftains of different septs or families, perhaps in one or two degrees of subordination, bearing a relation, which may be loosely called feudal to each other and to the crown.[1]

These chieftainships, and perhaps even the kingdoms themselves, though not partible, followed a very different rule of succession than that of primogeniture. They were subject to the law of tanistry, of which the principle is defined to be, that the demesne lands and dignity of chieftainship descended to the eldest and most worthy of the same blood; these epithets not being used, we may suppose, synonymously, but in order to indicate that the preference given to seniority was to be controlled by a due regard to desert. No better mode, it is evident, of providing for a perpetual supply of those civil quarrels in which the Irish are supposed to place so much of their enjoyment, could have been devised. Yet, as these grew sometimes a little too frequent, it was not unusual to elect a tanist, or reversionary successor, in the lifetime of the reigning chief, as has been the practice of the more civilized nations. An infant was never allowed to hold the sceptre of an Irish kingdom, but was necessarily postponed to his uncle or other kinsman of mature age; as was the case also in England, even after the consolidation of the Anglo-Saxon monarchy.[2]

The land-owners who did not belong to the noble class bore the same name as their chieftain, and were presumed to be of the same lineage. But they held their estates by a very different and an extraordinary

[1] Sir James Ware's Antiquities of Ireland. Leland's History of Ireland; Introduction. Ledwich's Dissertations.

[2] Id. Auct.; also Davis's Reports, 29., and his "Discovery of the true Causes why Ireland was never entirely subdued till his Majesty's happy Reign," 169. Sir John Davis, author of the philosophical poem Γνωθι Σεαυτον, was chief-justice of Ireland under James I. The tract just quoted is well known as a concise and luminous exposition of the history of that country from the English invasion.

tenure, that of Irish gavel-kind. On the decease of a proprietor, instead of an equal partition among his children, as in the gavel-kind of English law, the chief of the sept, according to the generally received explanation, made, or was entitled to make, a fresh division of all the lands within his district; allotting to the heirs of the deceased a portion of the integral territory along with the other members of the tribe. It seems impossible to conceive that these partitions were renewed on every death of one of the sept. But they are asserted to have at least taken place so frequently, as to produce a continual change of possession, and consequently to preclude altogether the improvement of the soil. The policy of this custom doubtless sprung from too jealous a solicitude as to the excessive inequality of wealth, and from the habit of looking on the tribe as one family of occupants, not wholly divested of its original right by the necessary allotment of lands to particular cultivators. It bore some degree of analogy to the institution of the year of jubilee in the Mosaic code, and, what may be thought more immediate, was almost exactly similar to the rule of succession which is laid down in the ancient laws of Wales.

In the territories of each sept, judges called Brehons, and taken out of certain families, sat with primeval simplicity upon turfen benches in some conspicuous situation, to determine controversies. Their usages are almost wholly unknown; for what have been published as fragments of the Brehon law seem open to great suspicion at least of being interpolated.[2] It is notorious, that according to the custom of many states in the infancy of civilization, the Irish admitted the composition or fine for murder, instead of capital punishment; and this was divided, as in other countries, between the kindred of the slain and the judge.

In the twelfth century it is evident that the Irish nation had made far less progress in the road of improvement than any other of Europe in circumstances of climate and position so little unfavourable. They had no arts, that deserve the name, nor any commerce, their best line of sea-coast being occupied by the Norwegians. They had no fortified

[1] Ware. Leland. Ledwich. Davis's Discovery, ibid. Reports, 49. It is remarkable that Davis seems to have been aware of an analogy between the custom of Ireland and Wales, and yet that he only quotes the statute of Rutland, 12 Edw. I., which by itself does not prove it. It is however proved, if I understand the passage, by one of the Leges Walliæ, published by Wotton, p. 139. A gavel or partition was made on the death of every member of a family for three generations, after which none could be enforced. But these parceners were to be all in the same degree; so that nephews could not compel their uncle to a partition, but must wait till his death, when they were to be put on an equality with their cousins; and this, I suppose, is meant by the expression in the statute of Rutland, "quod hæreditates remaneant partibiles inter *consimiles hæredes*."

[2] Leland seems to favour the authenticity of the supposed Brehon laws published by Vallancey. Introduction, 29. The style is said to be very distinguishable from the Irish of the twelfth or thirteenth century, and the laws themselves to have no allusion to the settlement of foreigners in Ireland, or to coined money; whence some ascribe them to the eighth century. On the other hand, Ledwich proves that some parts must be later than the tenth century. Dissertations, i. 270. And others hold them to be not older than the thirteenth. Campbell's Historical Sketch of Ireland, 41. It is also maintained that they are very unfaithfully translated. But, when we find the Anglo-Saxon and Norman usages, relief, aid, wardship, trial by jury, (and that unanimous), and a sort of correspondence in the ranks of society with those of England, (which all we read elsewhere of the ancient Irish seems to contradict), it is impossible to resist the suspicion that they are either extremely interpolated, or were compiled in a late age, and among some of the septs who had most intercourse with the English. We know that the degenerate colonists, such as the earls of Desmond, adopted the Brehon law in their territories; but this would probably be with some admixture of that to which they had been used in England.

towns, nor any houses or castles of stone; the first having been erected at Tuam a very few years before the invasion of Henry.[1] Their conversion to Christianity indeed, and the multitude of cathedral and conventual churches erected throughout the island, had been the cause, and probably the sole cause, of the rise of some cities, or villages with that name, such as Armagh, Cashel, and Trim. But neither the chiefs nor the people loved to be confined within their precincts, and chose rather to dwell in scattered cabins amidst the free solitude of bogs and mountains. As we might expect, their qualities were such as belong to man by his original nature, and which he displays in all parts of the globe where the state of society is inartificial: they were gay, generous, hospitable, ardent in attachment and hate, credulous of falsehood, prone to anger and violence, generally crafty, and cruel. With these very general attributes of a barbarous people, the Irish character was distinguished by a peculiar vivacity of imagination, an enthusiasm and impetuosity of passion, and a more than ordinary bias towards a submissive and superstitious spirit in religion.

This spirit may justly be traced in a great measure to the virtues and piety of the early preachers of the gospel in that country. Their influence, though at this remote age, and with our imperfect knowledge, it may hardly be distinguishable amidst the licentiousness and ferocity of a rude people, was necessarily directed to counteract those vices, and cannot have failed to mitigate and compensate their evil. In the seventh and eighth centuries, while a total ignorance seemed to overspread the face of Europe, the monasteries and schools of Ireland preserved, in the best manner they could, such learning as had survived the revolutions of the Roman world. But the learning of the monasteries had never much efficacy in dispelling the ignorance of the laity; and indeed even in them it had decayed long before the twelfth century. The clergy were respected and numerous. The bishops alone amounting at one time to no less than 300. (Ledwich, i. 395.) And it has been maintained by our most learned writers, that they were wholly independent of the see of Rome till a little before the English invasion, when one of their primates thought fit to solicit the pall from thence on his consecration, according to the discipline long practised in other western churches.

It will be readily perceived that the government of Ireland must have been almost entirely aristocratical, and not very unlike that of the feudal confederacies in France during the ninth and tenth centuries. It was perhaps still more oppressive. The ancient condition of the common people of Ireland, says sir James Ware, was very little different from slavery. (Antiquities of Ireland, ii. 76.) Unless we believe this condition to have been greatly deteriorated under the rule of their native

[1] "The first pile of lime and stone that ever was in Ireland was the castle of Tuam, built in 1161, by Roderic O'Connor, the monarch." Introduction to Cox's History of Ireland. I do not find that any later writer controverts this, as far as the aboriginal Irish are concerned: but doubtless the Norwegian Ostmen had stone churches, and there seems little doubt that some at least of the famous round towers so common in Ireland were erected by them. See Ledwich's Dissertations, vii. 143.; and the book called Grose's Antiquities of Ireland, also written by Ledwich. Piles of stone without mortar are excluded by Cox's expression. In fact, the Irish had very few stone houses, or even regular villages and towns, before the time of James I. Davis, 170.

chieftains after the English settlement, for which there seems no good reason, we must give little credit to the fanciful pictures of prosperity and happiness in that period of aboriginal independence which the Irish, in their discontent with later times, have been apt to draw. They had, no doubt, like all other nations, good and wise princes, as well as tyrants and usurpers. But we find by their annals that out of two hundred ancient kings, of whom some brief memorials are recorded, not more than thirty came to a natural death (Ledwich, i. 260.); while, for the later period, the oppression of the Irish chieftains, and of those degenerate English who trod in their steps, and emulated the vices they should have restrained, is the one constant theme of history. Their exactions kept the peasants in hopeless poverty, their tyranny in perpetual fear. The chief claimed a right of taking from his tenants provisions for his own use at discretion, or of sojourning in their houses. This was called coshery, and is somewhat analogous to the royal prerogative of purveyance. A still more terrible oppression was the quartering of the lords' soldiers on the people, sometimes mitigated by a composition, called by the Irish bonaght.[1] For the perpetual warfare of these petty chieftains had given rise to the employment of mercenary troops, partly natives, partly from Scotland, known by the uncouth names of Kerns and Gallow-glasses, who proved the scourge of Ireland down to its final subjugation by Elizabeth.

This unusually backward condition of society furnished but an inauspicious presage for the future. Yet we may be led by the analogy of other countries to think it probable that if Ireland had not tempted the cupidity of her neighbours, there would have arisen in the course of time some Egbert or Harold Harfager to consolidate the provincial kingdoms into one hereditary monarchy; which by the adoption of better laws, the increase of commerce, and a frequent intercourse with the chief courts of Europe, might have taken as respectable a station as that of Scotland in the commonwealth of Christendom. If the two islands had afterwards become incorporated through intermarriage of their sovereigns, as would very likely have taken place, it might have been on such conditions of equality as Ireland, till lately, has never known; and certainly without that long tragedy of crime and misfortune which her annals unfold.

The reduction of Ireland, at least in name, under the dominion of Henry II. was not achieved by his own efforts. He had little share in it, beyond receiving the homage of Irish princes, and granting charters to his English nobility. Strongbow, Lacy, Fitz-Stephen, were the real conquerors through whom alone any portion of Irish territory was gained by arms or treaty; and as they began the enterprise without the king, they carried it on also for themselves, deeming their swords a better security than his charters. This ought to be kept in mind, as revealing the secret of the English government over Ireland, and furnishing a justification for what has the appearance of a negligent abandonment of its authority. The few barons, and other adventurers, who by dint of forces hired by themselves, and, in some instances, by conventions with the Irish, settled their armed colonies in the island, though they had done much for Henry II., in causing his name to be

[1] Ware, ii. 74. Davis's Discovery, 174. Spenser's State of Ireland, 390.

acknowledged, his administration to be established in Dublin, and in holding their lands by his grant. They claimed in their turn, according to the practice of all nations and the principles of equity, that those who had borne the heat of the battle should enjoy the spoil without molestation. Hence, the enormous grants of Henry and his successors, though so often censured for impolicy, were probably what they could scarce avoid; and though not perhaps absolutely stipulated as the price of titular sovereignty, were something very like it. (Davis, 135.) But what is to be censured, and what at all hazards they were bound to refuse, was the violation of their faith to the Irish princes, in sharing among these insatiable barons their ancient territories; which, setting aside the wrong of the first invasion, were protected by their homage and submission, and sometimes by positive conventions. The whole island, in fact, with the exception of the county of Dublin and the maritime towns, was divided before the end of the thirteenth century, and most of it in the twelfth, among ten English families: earl Strongbow, who had some colour of hereditary title, according to our notions of law, by his marriage with the daughter of Dermot, king of Leinster, obtaining a grant of that province; Lacy acquiring Meath, which was not reckoned a part of Leinster, in the same manner; the whole of Ulster being given to de Courcy; the whole of Connaught to de Burgh; and the rest to six others. These, it must be understood, they were to hold in a sort of feudal suzerainty, parcelling them among their tenants of the English race, and expelling the natives, or driving them into the worst parts of the country by an incessant warfare.

The Irish chieftains, though compelled to show some exterior signs of submission to Henry, never thought of renouncing their own authority or the customs of their forefathers; nor did he pretend to interfere with the government of their septs, content with their promise of homage and tribute, neither of which were afterwards paid. But in those parts of Ireland which he reckoned his own, it was his aim to establish the English laws, to render the lesser island, as it were, a counterpart in all its civil constitution, and mirror of the greater. The colony from England was already not inconsiderable, and likely to increase; the Ostmen, who inhabited the maritime towns, came very willingly, as all settlers of Teutonic origin have done, into the English customs and language; and upon this basis, leaving the accession of the aboriginal people to future contingencies, he raised the edifice of the Irish constitution. He gave charters of privilege to the chief towns, began a division into counties, appointed sheriffs and judges of assize to administer justice, erected supreme courts at Dublin, and perhaps assembled parliaments. (Leland, 80. et post. Davis, 100.) His successors pursued the same course of policy; the great charter of liberties, as soon as granted by John at Runnymede, was sent over to Ireland: and the whole common law, with all its forms of process, and every privilege it was deemed to convey, became the birthright of the Anglo-Irish colonists.[1]

These had now spread over a considerable part of the island. Twelve counties appear to have been established by John, compre-

[1] 4 Inst. 349. Leland, 203. Harris's Hibernica, ii 14.

hending most of Leinster and Munster; while the two ambitious families of Courcy and de Burgh encroached more and more on the natives in the other provinces.[1] But the same necessity, which gratitude for the services, or sense of the power of the great families had engendered, for rewarding them by excessive grants of territory, led to other concessions that rendered them almost independent of the monarchy. (Leland, 170.) The franchise of a county palatine gave a right of exclusive civil and criminal jurisdiction; so that the king's writ should not run, nor his judges come within it, though judgment in its courts might be reversed by writ of error in the king's bench. The lord might enfeoff tenants to hold by knight's service of himself; he had almost all regalian rights; the lands of those attainted for treason escheated to him; he acted in every thing rather as one of the great feudataries of France or Germany than a subject of the English crown. Such had been Chester, and only Chester, in England; but in Ireland this dangerous independence was permitted to Strongbow in Leinster, to Lacy in Meath, and at a later time to the Butlers and Geraldines in parts of Munster. Strongbow's vast inheritance soon fell to five sisters, who took to their shares, with the same palatine rights, the counties of Carlow, Wexford, Kilkenny, Kildare, and the district of Leix, since called the Queen's County.[2] In all these palatinates, forming by far the greater portion of the English territories, the king's process had its course only within the lands belonging to the church. (Davis, 147. Leland 291.) The English aristocracy of Ireland, in the thirteenth and fourteenth centuries, bears a much closer analogy to that of France in rather an earlier period than any thing which the history of this island can show.

Pressed by the inroads of these barons, and despoiled frequently of lands secured to them by grant or treaty, the native chiefs had recourse to the throne for protection, and would in all likelihood have submitted without repining to a sovereign who could have afforded it. (Id. 194. 209.) But John and Henry III., in whose reigns the independence of the aristocracy was almost complete, though insisting by writs and proclamations on a due observance of the laws, could do little more for their new subjects, who found a better chance of redress in standing on their own defence. The powerful septs of the north enjoyed their liberty. But those of Munster and Leinster, intermixed with the English, and encroached upon from every side, were the victims of constant injustice; and abandoning the open country for bog and mountain pasture, grew more poor and barbarous in the midst of the general advance of Europe. Many remained under the yoke of English lords, and in a worse state than that of villenage, because still less

[1] These counties are Dublin, Kildare, Meath (including Westmeath), Louth, Carlow, Wexford, Kilkenny, Waterford, Cork, Tipperary, Kerry, and Limerick. In the reign of Edward I. we find sheriffs also of Connaught and Roscommon. Leland, i. 19 Thus, except the northern province and some of the central districts, all Ireland was shire-ground, and subject to the crown in the thirteenth century, however it might fall away in the two next. Those who write confusedly about this subject, pretend that the authority of the king at no time extended beyond the pale; whereas that name was not known, I believe, till the fifteenth century. Under the great earl of Pembroke, who died in 1219, the whole island was perhaps nearly as much reduced under obedience as in the reign of Elizabeth. Leland, 205.

[2] Davis, 140. William Marischal, earl of Pembroke, who married the daughter of earl Strongbow, left five sons and five daughters; the first all died without issue.

protected by the tribunals of justice. The Irish had originally stipulated with Henry II. for the use of their own laws. (Leland, 225.) They were consequently held beyond the pale of English justice, and regarded as aliens at the best, sometimes as enemies, in our courts. Thus, as by the Brehon customs murder was only punished by a fine, it was not held felony to kill one of Irish race, unless he had conformed to the English law.[1] Five septs, to which the royal families of Ireland belonged, the names of O'Neal, O'Connor, O'Brien, O'Malachlin, and Mac Murrough, had the special immunity of being within the protection of our law, and it was felony to kill one of them. I do not know by what means they obtained this privilege; for some of these were certainly as far from the king's obedience as any in Ireland.[2] But besides these a vast number of charters of denization were granted to particular persons of Irish descent from the reign of Henry II. downwards, which gave them and their posterity the full birthrights of English subjects: nor does there seem to have been any difficulty in procuring these.[3] It cannot be said, therefore, that the English government, or those who represented it in Dublin, displayed any reluctance to emancipate the Irish from thraldom. Whatever obstruction might be interposed to this was from that assembly whose concurrence was necessary to every general measure, the Anglo-Irish parliament. Thus, in 1278, we find the first instance of an application from the community of Ireland, as it is termed, but probably from some small number of septs dwelling among the colony, that they might be admitted to live by the English law, and offering 8000 marks for this favour. The letter of Edward I. to the justiciary of Ireland on this is sufficiently characteristic both of his wisdom and his rapaciousness. He is satisfied of the expediency of granting the request, provided it can be done with the general consent of the prelates and nobles of Ireland; and directs the justiciary, if he can obtain that concurrence to agree with the petitioners for the highest fine he can obtain, and for a body of good and stout soldiers. (Leland, 243.) But this necessary consent of the aristocracy was withheld. Excuses were made to evade the king's desire. It was wholly incompatible with their systematic encroachments on their Irish neighbours to give them the safeguard of the

[1] Davis, 100. 109. He quotes the following record from an assize at Waterford, in the 4th of Edward II. (1311), which may be extracted, as briefly illustrating the state of law in Ireland better than any general positions. "Quod Robertus le Wayleys rectatus de morte Johannis filii Ivor Mac-Gillemory, felonicè per ipsum interfecti, etc. Venit et bene cognovit quod prædictum Johannem interfecit; dicit tamen quod per ejus interfectionem feloniam committere non potuit, quia dicit, quod prædictus Johannes fuit purus Hibernicus, et non de libero sanguine, etc. Et cum dominus dicti Johannis, cujus Hibernicus idem Johannes fuit, die quo interfectus fuit, solutionem pro ipso Johanne Hibernico suo sic interfecto petere voluerit, ipse Robertus paratus erit ad respondendum de solutione prædictâ prout justitia suadebit. Et super hoc venit quidam Johannes le Poer, et dicit pro domino rege, quod prædictus Johannes filius Ivor Mac-Gillemory, et antecessores sui de cognomine prædicto a tempore quo dominus Henricus filius imperatricis, quondam dominus Hiberniæ, tritavus domini regis nunc, fuit in Hibernià, legem Anglicanam in Hibernià usque ad hanc diem habere, et secundum ipsam legem judicari et deduci debent." We have here both the general rule, that the death of an Irishman was only punishable by a composition to his lord, and the exception in behalf of those natives who had conformed to the English law.

[2] Id. 104. Leland, 82. It was necessary to plead in bar of an action, that the plaintiff was Hibernicus, et non de quinque sanguinibus.

[3] Davis, 106. "If I should collect out of the records all the charters of this kind, I should make a volume thereof." They began as early as the reign of Henry III. Leland, 225.

king's writ for their possessions. The Irish renewed their supplication more than once, both to Edward I. and Edward III.; they found the same readiness in the English court; they sunk at home through the same unconquerable oligarchy. (Leland. 289.) It is not to be imagined that the entire Irishry partook in this desire of renouncing their ancient customs. Besides the prejudices of nationality, there was a strong inducement to preserve the Brehon laws of tanistry, which suited better a warlike tribe than the hereditary succession of England. But it was the unequivocal duty of the legislature to avail itself of every token of voluntary submission; which, though beginning only with the subject septs of Leinster, would gradually incorporate the whole nation in a common bond of co-equal privileges with their conquerors.

Meanwhile, these conquerors were themselves brought under a moral captivity of the most disgraceful nature; and, not as the rough soldier of Rome is said to have been subdued by the art and learning of Greece, the Anglo-Norman barons, that had wrested Ireland from the native possessors, fell into their barbarous usages, and emulated the vices of the vanquished. This degeneracy of the English settlers began very soon, and continued to increase for several ages. They intermarried with the Irish; they connected themselves with them by the national custom of fostering, which formed an artificial relationship of the strictest nature;[1] they spoke the Irish language; they affected the Irish dress and manner of wearing the hair;[2] they even adopted, in some instances, Irish surnames; they harassed their tenants with every Irish exaction and tyranny; they administered Irish law, if any at all; they became chieftains rather than peers; and neither regarded the king's summons to his parliaments, nor paid any obedience to his judges. (Davis, 152. 182. Leland, i. 256, &c. Ware, ii. 58.) Thus the great family of De Burgh or Burke, in Connaught, fell off almost entirely from subjection; nor was that of the earls of Desmond, a younger branch of the house of Geraldine or Fitzgerald,

[1] "There were two other customs, proper and peculiar to the Irishry, which, being the cause of many strong combinations and factions, do tend to the utter ruin of a commonwealth. The one was *fostering*, the other *gossipred*; both which have ever been of greater estimation among this people than with any other nation in the Christian world. For *fostering*, I did never hear or read that it was in that use or reputation in any other country, barbarous or civil, as it hath been, and yet is, in Ireland, where they put away all their children to fosterers: the potent and rich men selling, the meaner sort buying, the alterage and nursing of their children; and the reason is, because in the opinion of this people, *fostering* hath always been a stronger alliance than blood; and the foster-children do love and are beloved of their foster-fathers and their sept, more than of their own natural parents and kindred, and do participate of their means more frankly, and do adhere to them in all fortunes, with more affection and constancy. The like may be said of *gossipred* or compaternity, which though by the canon law it be a spiritual affinity, and a juror that was gossip to either of the parties might in former times have been challenged, as not indifferent, by our law, yet there was no nation under the sun that ever made so religious an account of it as the Irish." Davis, 179.

[2] "For that now there is no diversity in array between the English marchers and the Irish enemies, and so by colour of the English marchers, the Irish enemies do come from day to day into the English counties as English marchers, and do rob and kill by the highways, and destroy the common people by lodging upon them in the nights, and also do kill the husbands in the nights, and do take their goods to the Irish men; wherefore it is ordained and agreed, that no manner of man that will be taken for an Englishman shall have no beard above his mouth; that is to say, that he have no hairs upon his upper lip, so that the said lip be once at least shaven every fortnight, or of equal growth with the nether lip. And if any man be found among the English contrary hereunto, that then it shall be lawful to every man to take them and their goods as Irish enemies, and to ransom them as Irish enemies." Irish Statutes, 25 Henry VI. c. 4.

much less independent of the crown; though by the title it enjoyed, and the palatine franchises granted to it by Edward III. over the counties of Limerick and Kerry, it seemed to keep up more show of English allegiance.

The regular constitution of Ireland was, as I have said, as nearly as possible a counterpart of that established in this country. The administration was vested in an English justiciary or lord deputy, assisted by a council of judges and principal officers, mixed with some prelates and barons, but subordinate to that of England, as the immediate advisers of the sovereign. The courts of Chancery, King's Bench, Common Pleas, and Exchequer, were the same in both countries; but writs of error lay from judgments given in the second of these to the same court in England. For all momentous purposes, as to grant a subsidy, or enact a statute, it was as necessary to summon a parliament in the one island as in the other. An Irish parliament originally, like an English one, was but a more numerous council, to which the more distant as well as the neighbouring barons were summoned, whose consent, though dispensed with in ordinary acts of state, was both the pledge and the condition of their obedience to legislative provisions. In 1295, the sheriff of each county and liberty is directed to return two knights to a parliament held by Wogan, an active and able deputy. (Leland, 253.) The date of the admission of burgesses cannot be fixed with precision; but it was probably not earlier than the reign of Edward III. They appear in 1341; and the earl of Desmond summoned many deputies from corporations to his rebel convention held at Kilkenny in the next year. (Cox's Hist. of Ireland, 117. 120.) The commons are mentioned as an essential part of parliament in an ordinance of 1359; before which time, in the opinion of lord Coke, "the conventions in Ireland were not so much parliaments as assemblies of great men." (Id. 125. 129. Leland, 313.) This, as appears, is not strictly correct; but in substance they were perhaps little else long afterwards.

The earliest statutes on record are of the year 1310; and from that year they are lost till 1429, though we know many parliaments to have been held in the mean time, and are acquainted by other means with their provisions. Those of 1310 bear witness to the degeneracy of the English lords, and to the laudable zeal of a feeble government for the reformation of their abuses. They begin with an act to restrain great lords from taking of prises, lodging, and sojourning with the people of the country against their will. "It is agreed and assented," the act proceeds, "that no such prises shall be henceforth made without ready payment and agreement, and that none shall harbour or sojourn at the house of any other by such malice against the consent of him which is owner of the house to destroy his goods; and, if any shall do the same, such prises, and such manner of destruction, shall be holden for open robbery, and the king shall have the suit thereof, if others will not, nor dare not sue. It is agreed also, that none shall keep idle people nor kearn (foot-soldiers) in time of peace to live upon the poor of the country, but that those which will have them, shall keep them at their own charges, so that their free tenants, nor farmers, nor other tenants, be not charged with them." The statute proceeds to restrain

great lords or others, except such as have royal franchises, from giving protections, which they used to compel the people to purchase; and directs that there shall be commissions of assize and gaol delivery through all the counties of Ireland. (Irish Statutes.)

These regulations exhibit a picture of Irish miseries. The barbarous practices of coshering and bonaght, the latter of which was generally known in later times by the name of coyne and livery, had been borrowed from those native chieftains whom our modern Hibernians sometimes hold forth as the paternal benefactors of their country.[1] It was the crime of the Geraldines and the De Courcys to have retrograded from the comparative humanity and justice of England, not to have deprived the people of freedom and happiness they had never known. These degenerate English, an epithet by which they are always distinguished, paid no regard to the statutes of a parliament which they had disdained to attend, and which could not render itself feared. We find many similar laws in the fifteenth century, after the interval which I have noticed in the printed records. And, in the intervening period, a parliament held by Lionel duke of Clarence, second son of Edward III., at Kilkenny, in 1367, the most numerous assembly that had ever met in Ireland, was prevailed upon to pass a very severe statute against the insubordinate and degenerate colonists. It recites that the English of the realm of Ireland were become mere Irish in their language, names, apparel, and manner of living, that they had rejected the English laws, and allied themselves by intermarriage with the Irish. It prohibits, under the penalties of high treason, or at least forfeiture of lands, all these approximations to the native inhabitants, as well as the connexions of fostering and gossipred. The English are restrained from permitting the Irish to graze their lands, from presenting them to benefices, or receiving them into religious houses, and from entertaining their bards. On the other hand, they are forbidden to make war upon their Irish neighbours without the authority of the state. And, to enforce better these provisions, the king's sheriffs are empowered to enter all franchises for the apprehension of felons or traitors. (Irish Statutes. Davis, 202. Cox. Leland.)

This statute, like all others passed in Ireland, so far from pretending to bind the Irish, regarded them not only as out of the king's allegiance, but as perpetually hostile to his government. They were generally denominated the Irish enemy. This doubtless was not according to the policy of Henry II., nor of the English government a considerable time after his reign. Nor can it be said to be the fact, though from some confusion of times the assertion is often made, that the island was not subject, in a general sense, to that prince, and to the three next kings of England. The English were settled in every province; an imperfect division of counties and administration of justice subsisted; and even the Irish chieftains, though ruling their septs by the Brehon law, do not appear in that period to have refused the acknowledgment of the king's sovereignty. But compelled to defend their lands against perpetual aggression, they justly renounced all allegiance to a government which could not redeem the original wrong of its

[1] Davis, 174. 189. Leland, 281. Maurice Fitz-Thomas, earl of Desmond, was the first of the English, according to Ware, ii. 76., who imposed the exaction of coyne and livery.

usurpation by the benefits of protection. They became gradually stronger; they regained part of their lost territories; and after the era of 1315, when Edward Bruce invaded the kingdom with a Scots army, and, though ultimately defeated, threw the government into a disorder from which it never recovered, their progress was so rapid, that in the space of thirty or forty years, the northern provinces, and even part of the southern, were entirely lost to the crown of England. (Leland, i. 278. 296. 324. Davis, 157. 197.)

It is unnecessary in so brief a sketch to follow the unprofitable annals of Ireland in the fourteenth and fifteenth centuries. Amidst the usual variations of war, the English interests were continually losing ground. Once only Richard II. appeared with a very powerful army, and the princes of Ireland crowded round his throne to offer homage.[1] But, upon his leaving the kingdom, they returned of course to their former independence and hostility. The long civil wars of England in the next century consummated the ruin of its power over the sister island. The Irish possessed all Ulster, and shared Connaught with the degenerate Burkes. The sept of O'Brien held their own district of Thomond, now the county of Clare. A considerable part of Leinster was occupied by other independent tribes; while, in the south, the earls of Desmond, lords either by property or territorial jurisdiction of the counties of Kerry and Limerick, and in some measure of those of Cork and Waterford, united the turbulence of English barons with the savage manners of Irish chieftains; ready to assume either character as best suited their rapacity and ambition; reckless of the king's laws or his commands, but not venturing, nor, upon the whole, probably wishing, to cast off the name of his subjects. The elder branch of their house, the earls of Kildare, and another illustrious family, the Butlers earls of Ormond, were apparently more steady in their obedience to the crown; yet, in the great franchises of the latter, comprising the counties of Kilkenny and Tipperary, the king's writ had no course; nor did he exercise any civil or military authority but by the permission of this mighty peer. (Davis, 193.) Thus, in the reign of Henry VII., when the English authority over Ireland had reached its lowest point, it was, with exception perhaps of a very few sea-ports, to all intents confined to the four counties of the English pale, a name not older perhaps than the preceding century; those of Dublin, Louth, Kildare, and Meath, the latter of which at that time included West Meath. But even in these there were extensive marches, or frontier districts, the inhabitants of which were hardly distinguishable from the Irish, and paid them a tribute, called black-rent; so that the real supremacy of the English laws was not probably established beyond the two first of these counties, from Dublin to Dundalk on the coast, and for about thirty miles inland.[2] From this

[1] Leland, 342. The native chieftains who came to Dublin are said to have been seventy-five in number; but the insolence of the courtiers, who ridiculed an unusual dress and appearance, disgusted them.

[2] Leland, ii. 822. et post. Davis, 199. 229. 236. Holingshed's Chronicles of Ireland, p. 4. Finglas, a baron of the exchequer in the reign of Henry VIII., in his Breviate of Ireland, from which Davis has taken great part of his materials, says expressly, that, by the disobedience of the Geraldines and Butlers, and their Irish connexions, "the whole land is now of Irish rule, except the little English pale, within the counties of Dublin and Meath, and Uriel [Louth], which pass not thirty or forty miles in compass." The English were also expelled from

time, however, we are to date its gradual recovery. The more steady councils and firmer prerogative of the Tudor kings left little chance of escape from their authority either for rebellious peers of English race, or the barbarous chieftains of Ireland.

I must pause at this place to observe that we shall hardly find in the foregoing sketch of Irish history, during the period of the Plantagenet dynasty (nor am I conscious of having concealed any thing essential), that systematic oppression and misrule which is every day imputed to the English nation and its government. The policy of our kings appears to have generally been wise and beneficent; but it is duly to be remembered that those very limitations of their prerogative which constitute liberty, must occasionally obstruct the execution of the best purposes; and that the co-ordinate powers of parliament, so justly our boast, may readily become the screen of private tyranny and inveterate abuse. This incapacity of doing good as well as harm has produced, comparatively speaking, little mischief in Great Britain; where the aristocratical element of the constitution is neither so predominant, nor so much in opposition to the general interest, as it may be deemed to have been in Ireland. But it is manifestly absurd to charge the Edwards and Henrys, or those to whom their authority was delegated at Dublin, with the crimes they vainly endeavoured to chastise, much more to erect either the wild barbarians of the north, the O'Neals and O'Connors, or the degenerate houses of Burke and Fitzgerald, into patriot assertors of their country's welfare. The laws and liberties of England were the best inheritance to which Ireland could attain; the sovereignty of the English crown her only shield against native or foreign tyranny. It was her calamity that these advantages were long withheld; but the blame can never fall upon the government of this island.

In the contest between the houses of York and Lancaster, most of the English colony in Ireland had attached themselves to the fortunes of the White Rose; they even espoused the two pretenders, who put in jeopardy the crown of Henry VII.; and became of course obnoxious to his jealousy, though he was politic enough to forgive in appearance their disaffection. But, as Ireland had for a considerable time rather served the purposes of rebellious invaders, than of the English monarchy, it was necessary to make her subjection, at least so far as the settlers of the pale were concerned, more than a word. This produced the famous statute of Drogheda, in 1495, known by the name of Poyning's law, from the lord deputy through whose vigour and prudence it was enacted. It contained a variety of provisions to restrain the lawlessness of the Anglo-Irish within the pale (for to no others could it immediately extend), and to confirm the royal sovereignty. All private hostilities without the deputy's licence were declared illegal; but to excite the Irish to war was made high treason. Murders were to be prosecuted according to law, and not, in the manner of the natives, by pillaging, or exacting a fine from the sept of the slayer. The citizens

Munster, except the walled towns. The king had no profit out of Ulster, but the manor of Carlingford, nor any in Connaught. This treatise, written about 1530, is printed in Harris's Hibernica. The proofs that, in this age, the English law and government were confined to the four shires, are abundant. It is even mentioned in a statute, 13 H. VIII. c. 2.

or freemen of towns were prohibited from receiving wages or becoming retainers of lords and gentlemen; and, to prevent the ascendancy of the latter class, none who had not served apprenticeships were to be admitted as aldermen or freemen of corporations. The requisitions of coyne and livery, which had subsisted in spite of the statutes of Kilkenny, were again forbidden, and those statutes were renewed and confirmed. The principal officers of state and the judges were to hold their patents during pleasure, "because of the great inconvenience that had followed from their being for term of life, to the king's grievous displeasure." A still more important provision, in its permanent consequence, was made, by enacting that all statutes lately made in England be deemed good and effectual in Ireland. It has been remarked that the same had been done by an Irish act of Edward IV. Some question might also be made, whether the word "lately" was not intended to limit this acceptation of English law. But in effect this enactment has made an epoch in Irish jurisprudence; all statutes made in England prior to the eighteenth year of Henry VII. being held equally valid in that country, while none of later date have any operation, unless specially adopted by its parliament; so that the law of the two countries has begun to diverge from that time, and after three centuries has been in several respects differently modified.

But even these articles of Poyning's law are less momentous than one by which it is peculiarly known. It is enacted that no parliament shall in future be holden in Ireland, till the king's lieutenant shall certify to the king, under the great seal, the causes and considerations, and all such acts as it seems to them ought to be passed thereon, and such be affirmed by the king and his council, and his licence to hold a parliament be obtained. Any parliament holden contrary to this form and provision should be deemed void. Thus, by securing the initiative power to the English council, a bridle was placed in the mouths of every Irish parliament. It is probable also, that it was designed as a check on the lord-deputies, sometimes powerful Irish nobles, whom it was dangerous not to employ, but still more dangerous to trust. Whatever might be its motives, it proved in course of time the great means of preserving the subordination of an island, which, from the similarity of constitution, and the high spirit of its inhabitants, was constantly panting for an independence which her more powerful neighbour neither desired nor dared to concede. (Irish Statutes. Davis, 230. Leland, ii. 102.)

No subjects of the crown in Ireland enjoyed such influence at this time as the earls of Kildare; whose possessions lying chiefly within the pale, they did not affect an ostensible independence, but generally kept in their hands the chief authority of government, though it was the policy of the English court, in its state of weakness, to balance them in some measure by the rival family of Butler. But the self-confidence with which this exaltation inspired the chief of the former house laid him open to the vengeance of Henry VIII.; he affected, while lord-deputy, to be surrounded by Irish lords, to assume their wild manners, and to intermarry his daughters with their race. The counsellors of English birth or origin dreaded this suspicious approximation to their hereditary enemies; and Kildare, on their complaint, was compelled

to obey his sovereign's order by repairing to London. He was committed to the Tower; on a premature report that he had suffered death, his son, a young man to whom he had delegated the administration, took up arms under the rash impulse of resentment; the primate was murdered by his wild followers, but the citizens of Dublin and the reinforcement sent from England suppressed this hasty rebellion, and its leader was sent a prisoner to London. Five of his uncles, some of them not concerned in the treason, perished with him on the scaffold; his father had been more fortunate in a natural death; one sole surviving child of twelve years old, who escaped to Flanders, became afterwards the stock from which the great family of the Geraldines was restored. (Leland.)

The chieftains of Ireland were justly attentive to the stern and systematic despotism which began to characterize the English government, displayed, as it thus was, in the destruction of an ancient and loyal house. But their intimidation produced contrary effects; they became more ready to profess allegiance and to put on the exterior badges of submission; but more jealous of the crown in their hearts, more resolute to preserve their independence, and to withstand any change of laws. Thus, in the latter years of Henry, after the northern Irish had been beaten by an able deputy, lord Leonard Grey, and the lordship of Ireland, the title hitherto borne by the successors of Henry II., had been raised by act of parliament to the dignity of a kingdom, (Irish Statutes, 33 H. VIII. c. 1.) the native chiefs came in and submitted; the earl of Desmond, almost as independent as any of the natives, attended parliament, from which his ancestors had for some ages claimed a dispensation; several peerages were conferred, some of them on the old Irish families; fresh laws were about the same time enacted to establish the English dress and language, and to keep the colonists apart from Irish intercourse;[1] and after a disuse of two hundred years, the authority of government was nominally recognised throughout Munster and Connaught. (Leland, ii. 178. 184.) Yet we find that these provinces were still in nearly the same condition as before; the king's judges did not adminster justice in them, the old Brehon usages continued to prevail even in the territories of the new peers, though their primogenitary succession was evidently incompatible with Irish tanistry. A rebellion of two septs in Leinster under Edward VI. led to a more complete reduction of their districts, called Leix and O'Fally, which in the next reign were made shireland, by the names of King's and Queen's county.[2] But, at the accession of Elizabeth, it was

[1] Irish Statutes, 28 H. VIII. c. 15. 28. The latter act prohibits intermarriage or fostering with the Irish; which had indeed been previously restrained by other statutes. In one passed five years afterwards, it is recited that "the king's English subjects, by reason that they are inhabited in so little compass or circuit, and restrained by statute to marry with the Irish nation, and therefore of necessity must marry themselves together, so that in effect they all for the most part must be allied together; and therefore it is enacted, that consanguinity or affinity beyond the fourth degree shall be no cause of challenge on a jury." 33 H. VIII. c. 4. These laws were for many years of little avail, so far at least as they were meant to extend beyond the pale. Spenser's State of Ireland, p. 384, et post.

[2] Leland, ii. 189. 211. 3 and 4 P. and M. c. 1 and 2. Meath had been divided into two shires, by separating the western part. 34 H. VIII. c. 1. "Forasmuch as the shire of Methe is great and large in circuit, and the west part thereof laid about or beset with divers of the king's rebels." Baron Finglas says, "Half Meath has not obeyed the king's laws these one hundred years or more." Breviate of Ireland, apud Harris, p. 85.

manifest that an arduous struggle would ensue between law and liberty; the one too nearly allied to cool-blooded oppression, the other to ferocious barbarism.

It may be presumed, as has been already said, from the analogy of other countries, that Ireland, if left to herself, would have settled in time under some one line of kings, and assumed, like Scotland, much of the feudal character, the best transitional state of a monarchy from rudeness and anarchy to civilization. And, if the right of female succession had been established, it might possibly have been united to the English crown on a juster footing, and with far less of oppression or bloodshed than actually took place. But it was too late to dream of what might have been: in the middle of the sixteenth century Ireland could have no reasonable prospect of independence; nor could that independence have been any other than the most savage liberty, perhaps another denomination of servitude. It was doubtless for the interest of that people to seek the English constitution, which, at least in theory, was entirely accorded to their country, and to press with spontaneous homage round the throne of Elizabeth. But this was not the interest of their ambitious chieftains, whether of Irish or English descent, of a Slanes O'Neil, an earl of Tyrone, an earl of Desmond. Their influence was irresistible among a nation ardently sensible to the attachments of clanship, averse to innovation, and accustomed to dread and hate a government that was chiefly known by its severities. But the unhappy alienation of Ireland from its allegiance in part of the queen's reign would probably not have been so complete, or at least have led to such permanent mischiefs, if the ancient national animosities had not been exasperated by the still more invincible prejudices of religion.

But Henry VIII. had no sooner prevailed on the lords and commons of England to renounce their spiritual obedience to the Roman see, and to acknowledge his own supremacy, than, as a natural consequence, he proceeded to establish it in Ireland. In the former instance, many of his subjects, and even his clergy, were secretly attached to the principles of the reformation; as many others were jealous of ecclesiastical wealth, or eager to possess it. But in Ireland the reformers had made no progress; it had been among the effects of the pernicious separation of the two races, that the Irish priests had little intercourse with their bishops, who were nominated by the king, so that their synods are commonly recited to have been holden *inter Anglicos;* the bishops themselves were sometimes intruded by violence, more often dispossessed by it; a total ignorance and neglect prevailed in the church; and it is even found impossible to recover the succession of the names in some sees. (Leland ii. 158.) In a nation so ill predisposed, it was difficult to bring about a compliance with the king's demand of abjuring their religion; ignorant, but not indifferent, the clergy, with Cromer the primate at their head, and most of the lords and commons, in a parliament held at Dublin in 1536, resisted the act of supremacy, which was nevertheless ultimately carried by the force of government. Its enemies continued to withstand the new schemes of reformation, more especially in the next reign, when they went altogether to subvert the ancient faith. As it appeared dangerous to summon a parliament,

the English liturgy was ordered by a royal proclamation; but Dowdall, the new primate, as stubborn an adherent to the Romish church as his predecessor, with most of the other bishops and clergy, refused obedience; and the reformation was never legally established in the short reign of Edward. His eldest sister's accession reversed of course what had been done, and restored tranquillity in ecclesiastical matters; for the protestants were too few to be worth persecution, nor were even those molested who fled to Ireland from the fires of Smithfield.

Another scene of revolution ensued in a very few years. Elizabeth having fixed the protestant church on a stable basis in England, sent over the earl of Sussex to hold an Irish parliament in 1560. The disposition of such an assembly might be presumed hostile to the projected reformations; but, contrary to what had occurred on this side of the channel, though the peers were almost uniformly for the old religion, a large majority of the bishops are said to have veered round with the times, and supported, at least by conformity and acquiescence, the creed of the English court. In the house of commons, pains had been taken to secure a majority; ten only out of twenty counties, which had at that time been formed, received the writ of summons; and the number of seventy-six representatives of the Anglo-Irish people was made up by the towns, many of them under the influence of the crown, some perhaps containing a mixture of protestant population. The English laws of supremacy and uniformity were enacted in nearly the same words: and thus the common prayer was at once set up instead of the mass, but with a singular reservation, that in those parts of the country where the minister had no knowledge of the English language, he might read the service in Latin. All subjects were bound to attend the public worship of the church, and every other was interdicted. (Leland, 224. Irish Statutes, 2 Eliz.)

There were doubtless three arguments in favour of this compulsory establishment of the protestant church, which must have appeared so conclusive to Elizabeth and her council, that no one in that age could have disputed them without incurring, among other hazards, that of being accounted a lover of unreasonable paradoxes. The first was, that the protestant religion being true, it was the queen's duty to take care that her subjects should follow no other; the second, that, being an absolute monarch, or something like it, and a very wise princess, she had a better right to order what doctrine they should believe, than they could have to choose for themselves; the third, that Ireland, being as a handmaid, and a conquered country, must wait, in all important matters, on the the pleasure of the greater island, and be accommodated to its revolutions. And, as it was natural that the queen and her advisers should not reject maxims which all the rest of the world entertained, merely because they were advantageous to themselves, we need not perhaps be very acrimonious in censuring the laws whereon the church of Ireland is founded. But it is still equally true that they involve a principle essentially unjust, and that they have enormously aggravated, both in the age of Elizabeth and long afterwards, the calamities and disaffection of Ireland. An ecclesiastical establishment, that is, the endowment and privileges of a particular religious society, can have no advantages, (relatively at least to the community where it exists,) but

its tendency to promote in that community good order and virtue, religious knowledge and edification. But to accomplish this end in any satisfactory manner, it must be their church, and not that merely of the government; it should exist for the people, and in the people and with the people. This indeed is so manifest, that the government of Elizabeth never contemplated the separation of a great majority as licensed dissidents from the ordinances established for their instruction. It was undoubtedly presumed, as it was in England, that the church and commonwealth, according to Hooker's language, were to be two denominations of the same society; and that every man in Ireland who appertained to the one ought to embrace, and in due season would embrace, the communion of the other. There might be ignorance, there might be obstinacy, there might be feebleness of conscience for a time; and perhaps some connivance would be shown to these; but that the prejudices of a majority should ultimately prevail so as to determine the national faith, that it should even obtain a legitimate indulgence for its own mode of worship, was abominable before God, and incompatible with the sovereign authority.

This sort of reasoning, half bigotry, half despotism, was nowhere so preposterously displayed as in Ireland. The numerical majority is not always to be ascertained with certainty; and some regard may fairly, or rather necessarily, be had to rank, to knowledge, to concentration. But in that island, the disciples of the reformation were in the most inconsiderable proportion among the Anglo-Irish colony, as well as among the natives; their church was a government without subjects, a college of shepherds without sheep. I am persuaded that this was not intended nor expected to be a permanent condition; but such were the difficulties which the state of that unhappy nation presented, or such the negligence of its rulers, that scarce any pains were taken in the age of Elizabeth, nor indeed in subsequent ages, to win the people's conviction, or to eradicate their superstitions, except by penal statutes and the sword. The Irish language was universally spoken without the pale; it had even made great progress within it; the clergy were principally of that nation; yet no translation of the Scriptures, the chief means through which the Reformation had been effected in England and Germany, nor even of the regular liturgy, was made into that tongue; nor was it possible, perhaps, that any popular instruction should be carried far in Elizabeth's reign, either by public authority, or by the ministrations of the reformed clergy. Yet neither among the Welsh nor the Scots Highlanders, though Celtic tribes, and not much better in civility of life at that time than the Irish, was the ancient religion long able to withstand the sedulous preachers of reformation.

It is evident from the history of Elizabeth's reign, that the forcible dispossession of the catholic clergy, and their consequent activity in deluding a people too open at all times to their counsels, aggravated the rebellious spirit of the Irish, and rendered their obedience to the law more unattainable. But, even independently of this motive, the Desmonds and Tyrones would have tried, as they did, the chances of insurrection, rather than abdicate their unlicensed but ancient chieftainship. It must be admitted that, if they were faithless in promises of loyalty, the crown's representatives in Ireland set no good example;

and, when they saw the spoliations of property by violence or pretext of law, the sudden executions on alleged treasons, the breaches of treaty, sometimes even the assassinations, by which a despotic policy went onward in its work of subjugation, they did but play the usual game of barbarians in opposing craft and perfidy, rather more gross perhaps and notorious, to the same engines of a dissembling government.[1] Yet if we can put any trust in our own testimonies, the great Irish families were, by mismanagement and dissension, the curse of their vassals. Sir Henry Sidney represents to the queen, in 1567, the wretched condition of the southern and western counties in the vast territories of the earls of Ormond, Desmond, and Clanricarde. (Sidney Papers, i. 20.) "An unmeasurable tract," he says, "is now waste and uninhabited, which of late years was well tilled and pastured." "A more pleasant nor a more desolate land I never saw than from Youghall to Limerick." (Id. 24.) "So far hath that policy, or rather lack of policy, in keeping dissension among them prevailed, as now, albeit all that are alive would become honest and live in quiet, yet are there not left alive in those two provinces the twentieth person necessary to inhabit the same."[2] Yet this was but the first scene of calamity. After the rebellion of the last earl of Desmond, the counties of Cork and Kerry, his ample patrimony, were so wasted by war and military executions, and famine and pestilence, that, according to a contemporary writer, who expresses the truth with hyperbolical energy, "the land itself, which before those wars was populous, well inhabited, and rich in all the good blessings of God, being plenteous of corn, full of cattle, well stored with fruit and sundry other good commodities, is now become waste and barren, yielding no fruits, the pastures no cattle, the fields no corn, the air no birds, the seas, though full of fish, yet to them yielding nothing. Finally, every way the curse of God was so great, and the land so barren both of man and beast, that whosoever did travel from one end unto the other of all Munster, even from Water-

[1] Leland gives several instances of breach of faith in the government. A little tract, called a Brief Declaration of the Government of Ireland, written by Captain Lee, in 1594, and published in Desiderata Curiosa Hibernica, vol. i., censures the two last deputies (Grey and Fitzwilliams) for their ill usage of the Irish, and unfolds the despotic character of the English government. "The cause they (the lords of the north) have to stand upon those terms, and to seek for better assurance, is the harsh practices used against others, by those who have been placed in authority to protect men for your majesty's service, which they have greatly abused in this sort. They have drawn unto them by protection three or four hundred of the country people, under colour to do your majesty service, and brought them to a place of meeting, where your garrison soldiers were appointed to be, who have there most dishonourably put them all to the sword; and this hath been by the consent and practice of the lord deputy for the time being. If this be a good course to draw those savage people to the state to do your majesty service, and not rather to enforce them to stand on their guard, I leave to your majesty." P. 90. He goes on to enumerate more cases of hardship and tyranny; many being arraigned and convicted of treason on slight evidence; many assaulted and killed by the sheriffs on commissions of rebellion; others imprisoned and kept in irons; among others, a youth, the heir of a great estate. He certainly praises Tyrone more than, from subsequent events, we should think just, which may be thought to throw some suspicion on his own loyalty; yet he seems to have been a protestant, and, in 1594, the views of Tyrone were ambiguous, so that captain Lee may have been deceived.

[2] Sidney Papers, i. 29. Spenser descants on the lawless violence of the superior Irish; and imputes, I believe, with much justice, a great part of their crimes to his own brethren, if they might claim so proud a title, the bards: "whomsoever they find to be most licentious of life, most bold and lawless in his doings, most dangerous and desperate in all parts of disobedience and rebellious disposition, him they set up and glorify in their rhymes, him they praise to the people, and to young men make an example to follow." P. 394.

lord to the head of Limerick, which is about six-score miles, he should not meet any man, woman, or child, saving in towns and cities; nor yet see any beast but the very wolves, the foxes, and other like ravening beasts." (Holingshed, 460.) The severity of sir Arthur Grey, at this time deputy, was such that Elizabeth was assured he had left little for her to reign over but ashes and carcases; and, though not by any means of too indulgent a nature, she was induced to recall him.[1] His successor, sir John Perrott, who held the viceroyalty only from 1584 to 1587, was distinguished for a sense of humanity and justice, together with an active zeal for the enforcement of law. Sheriffs were now appointed for the five counties into which Connaught had some years before been parcelled; and even for Ulster, all of which, except Antrim and Down, had hitherto been undivided, as well as ungoverned.[2] Yet even this apparently wholesome innovation aggravated at first the servitude of the natives, whom the new sheriffs were prone to oppress.[3] Perrott, the best of Irish governors, soon fell a sacrifice to a court intrigue and the queen's jealousy; and the remainder of her reign was occupied with almost unceasing revolts of the earl of Tyrone, head of the great sect of O'Neil in Ulster, instigated by Rome and Spain, and endangering, far more than any preceding rebellion, her sovereignty over Ireland.

The old English of the pale were little more disposed to embrace the reformed religion, or to acknowledge the despotic principles of a Tudor administration, than the Irish themselves; and though they did not join in the rebellions of those they so much hated, the queen's deputies had sometimes to encounter a more legal resistance. A new race of colonists had begun to appear in their train, eager for possessions, and for the rewards of the crown, contemptuous of the natives, whether aboriginal or of English descent, and in consequence the objects of their aversion or jealousy. (Leland, 248.) Hence, in a parliament summoned by sir Henry Sidney in 1569, the first after that which had reluctantly established the protestant church, a strong country party, as it may be termed, was formed in opposition to the crown. They complained with much justice of the management by which irregular returns of members had been made; some from towns not incorporated, and which had never possessed the elective right; some self-chosen sheriffs and magistrates; some mere English strangers, returned for places which they had never seen. The judges, on reference to their opinion, declared the elections illegal in the two former cases; but

[1] Leland, 287. Spenser's Account of Ireland, p. 430. (vol. viii. of Todd's edition, 1805) Grey is the Arthegal of the Faery Queen, the representative of the virtue of justice in that allegory, attended by Talus with his iron flail, which indeed was unsparingly employed to crush rebellion. Grey's severity was signalised in putting to death seven hundred Spaniards who had surrendered at discretion in the fort of Smerwick. Though this might be justified by the strict laws of war (Philip not being a declared enemy), it was one of those extremities which justly revolt the common feelings of mankind. The queen is said to have been much displeased at it. Leland, 283. Spenser undertakes the defence of his patron Grey. State of Ireland, p. 434.

[2] Leland, 247. 293. An act had passed, 11 Eliz. c. 9., for dividing the whole island into shire-ground, appointing sheriffs, justices of the peace, &c.; which however was not completed.

[3] Leland, 305. Their conduct provoked an insurrection both in Connaught and Ulster. Spenser, who shows always a bias towards the most rigorous policy, does injustice to Perrott. "He did tread down and disgrace all the English, and set up and countenance the Irish all that he could." P. 437. This has in all ages been the language, when they have been placed on an equality or anything approaching to an equality, with their fellow subjects.

confirmed the non-resident burgesses, which still left a majority for the court.

The Irish patriots, after the preliminary discussion, opposed a new tax upon wines, and a bill for the suspension of Poyning's law. Hooker, an Englishman, chosen for Athenry, to whose account we are chiefly indebted for our knowledge of these proceedings, sustained the former in that high tone of a prerogative lawyer which always best pleased his mistress. "Her majesty," he said, "of her own royal authority, might and may establish the same without any of your consents, as she hath already done the like in England; saving of her courtesy, it pleaseth her to have it pass with your own consents by order of law, that she might thereby have the better trial and assurance of your dutifulness and good-will towards her." This language from a stranger, unusual among a people proud of their birthright in the common constitution, and little accustomed even to legitimate obedience, raised such a flame that the house was adjourned; and it was necessary to protect the utterer of such doctrines by a guard. The duty on wines, laid aside for the time, was carried in a subsequent session in the same year; and several other statutes were enacted, which, as they did not affect the pale, may possibly have encountered no opposition. A part of Ulster, forfeited by Slanes O'Neil, a rebel almost as formidable in the first years of this reign as his kinsman Tyrone was near its conclusion, was vested in the crown; and some provisions were made for the reduction of the whole island into shires. Connaught, in consequence, which had passed for one county, was divided into five.[1]

In sir Henry Sidney's second government, which began in 1576, the pale was excited to a more strenuous resistance, by an attempt to subvert their liberties. It had long been usual to obtain a sum of money for the maintenance of the household and of the troops, by an assessment settled between the council and principal inhabitants of each district. This, it was contended by the government, was instead of the contribution of victuals which the queen, by her prerogative of purveyance, might claim at a fixed rate, much lower than the current price. (Sidney Papers, i. 153.) It was maintai ed on the other side to be a voluntary benevolence. Sidney now devised a plan to change it for a ce.s or permanent composition for every plough-land, without regard to those which claimed exemption from the burthen of purveyance; and imposed this new tax by order of council, as sufficiently warrantable by the royal prerogative. The land-owners of the pale remonstrated against su h a violation of their franchises, and were met by the usual arguments. They appealed to the text of the laws; the deputy replied by precedents against law. "Her majesty's prerogative," he said, "is not limited by Magna Charta, nor found in Littleton's Tenures, nor written in th books of Assizes, but registered in the remembrances of her majesty's exchequer, and remains in the rolls of records of the Tower." (Id. 179.) It was proved, according to him, by the most ancient and credible records in the realm, that such charges had been imposed from time to time, sometimes by the name of cess, somet mes by other names, and more often by the governor and council, and such of the

[1] Holingshed's Ch onicles of Ireland, 342. This part is written by Hooker himself. Leland, 340. Irish Statutes, 11 Eliz.

nobility as came on summons, than by parliament. These irregularities did not satisfy the gentry of the pale, who refused compliance with the demand, and still alleged that it was contrary both to reason and law to impose any charge upon them without parliament or grand council. A deputation was sent to England in the name of all the subjects of the English pale. Sidney was not backward in representing their behaviour as the effect of disaffection; nor was Elizabeth likely to recede, where both her authority and her revenue were apparently concerned. But, after some demonstrations of resentment in committing the delegates to the Tower, she took alarm at the clamours of their countrymen; and, aware that the king of Spain was ready to throw troops into Ireland, desisted with that prudence which always kept her passion in command, accepting a voluntary composition for seven years in the accustomed manner.[1]

James I. ascended the throne with as great advantages in Ireland as in his other kingdoms. That island was already pacified by the submission of Tyrone; and all was prepared for a final establishment of the English power upon the basis of equal laws and civilized customs; a reformation which in some respects the king was not ill fitted to introduce. His reign is perhaps on the whole the most important in the constitutional history of Ireland, and that from which the present scheme of society in that country is chiefly to be deduced.

1. The laws of supremacy and uniformity, copied from those of England, were incompatible with any exercise of the Roman catholic worship, or with the admission of any members of that church into civil trust. It appears indeed that they were by no means strictly executed during the queen's reign; yet the priests were of course excluded, so far as the English authority prevailed, from their churches and benefices; the former were chiefly ruined; the latter fell to protestant strangers, or to conforming ministers of native birth, dissolute and ignorant, as careless to teach as the people were predetermined not to listen.[2] The priests, many of them, engaged in a conspiracy with the

[1] Sidney Papers, 84. 117, &c. to 236. Holingshed, 389. Leland, 261. Sidney was much disappointed at the queen's want of firmness; but it was plain by the correspondence that Walsingham also thought he had gone too far. P. 192. The sum required seems to have been reasonable, about 2000*l.* a year from the five shire. of the pale; and, if they had not been stubborn, he thought all Munster also, except the Desmond territories, would have submitted to the payment. (P. 183.) "I have great cause," he writes, "to mistrust the fidelity of the greatest number of the people of this country's birth of all degrees; they be papists, as I may well term them, body and soul. For not only in matter of religion they be Romish, but for government they will change to be under a prince of their own superstition. Since your highness' reign the papists never showed such boldness as now they do." P. 184. This however hardly tallies with what he says afterwards, p. 208.: "I do believe, for far the greatest number of the inhabitants of the English pale, her highness hath as true and faithful subjects as any she hath subject to the crown;" unless the former passage refer chiefly to those without the pale, who in fact were exclusively concerned in the rebellions of this reign.

[2] "The church is now so spoiled," says sir Henry Sidney in 1576, "as well by the ruin of the temples, as the dissipation and embezzling of the patrimony, and most of all for want of sufficient ministers, as so deformed and over-thrown a church there is not, I am sure, in any region where Christ is professed." Sidney Papers, i. 109. In the diocese of Meath, being the best inhabited country of all the realm, out of 224 parish churches, 105 were impropriate, with only curates, of whom but eighteen could speak English, the rest being Irish rogues, who used to be papists; fifty-two other churches had vicars, and fifty-two more were in better state than the rest, yet far from well. Id. 112. Spenser gives a bad character of the protestant clergy, p. 412.

An act was passed, 12 Eliz. c. 1., for erecting free schools in every diocese, under English masters; the ordinary paying one third of the salary, and the clergy the rest. This however

court of Spain against the queen and her successor, and all deeming themselves unjustly and sacrilegiously despoiled, kept up the spirit of disaffection, or at least of resistance to religious innovation, throughout the kingdom. (Leland, 413.) The accession of James seemed a sort of signal for casting off the yoke of heresy; in Cork, Waterford, and other cities, the people, not without consent of the magistrates, rose to restore the catholic worship; they seized the churches, ejected the ministers, marched in public processions, and shut their gates against the lord deputy. He soon reduced them to obedience; but almost the whole nation was of the same faith, and disposed to struggle for a public toleration. This was beyond every question their natural right, and as certainly was it the best policy for England to have granted it; but the king-craft and the priest-craft of the day taught other lessons. Priests were ordered by proclamation to quit the realm: the magistrates and chief citizens of Dublin were committed to prison for refusing to frequent the protestant church. The gentry of the pale remonstrated at the court of Wesminster; and, though their delegates atoned for their self-devoted courage by imprisonment, the secret menace of expostulation seems to have produced, as usual, some effect, in a direction to the lord deputy that he should endeavour to conciliate the recusants by instruction. These penalties of recusancy, from whatever cause, were very little enforced; but the catholics murmured at the oath of supremacy, which shut them out from every distinction: though here again the execution of the law was sometimes mitigated, they justly thought themselves humiliated, and the liberties of their country endangered, by standing thus at the mercy of the crown. And it is plain that, even within the pale, the compulsory statutes were at least far better enforced than under the queen; while in those provinces within which the law

must have been nearly impracticable. Another act, 13 Eliz. c. 4., enables the archbishop of Armagh to grant leases of his lands out of the pale for a hundred years without the assent of the dean and chapter, to persons of English birth, "or of the English and civil nation, born in this realm of Ireland," at the rent of 4d. an acre. It recites the chapter to be "except a very few of them, both by nation, education, and custom, Irish, Irishly affectioned, and small hopes of their conformities or assent unto any such devices as would tend to the placing of any such number of civil people there, to the disadvantage or bridling of the Irish." In these northern parts, the English and protestant interests had so little influence that the pope conferred three bishoprics, Derry, Clogher, and Raphoe, throughout the reign of Elizabeth. Davis. 254. Leland, ii. 248. What is more remarkable is, that two of these prelates were summoned to parliament in 1585, Id. 295.; the first in which some Irish were returned among the commons

The reputation of the protestant church continued to be little better in the reign of Charles I., though its revenues were much improved. Strafford gives the clergy a very bad character in writing to Laud. Vol. i. 187. And Burnet's Life of Bedell, transcribed chiefly from a contemporary memoir, gives a detailed account of that bishop's diocese (Kilmore), which will take off any surprise that might be felt at the slow progress of the reformation. He had about fifteen protestant clergy, but all English, unable to speak the tongue of the people, or to perform any divine offices, or converse with them, "which is no small cause of the continuance of the people in popery still." P. 47. The bishop observed, says his biographer, "with much regret, that the English had all along neglected the Irish as a nation, not only conquered but undisciplinable; and that the clergy had scarce considered them as a part of their charge; but had left them wholly into the hands of their own priests, without taking any other care of them but the making them pay their tithes. And indeed their priests were a strange sort of people, that knew generally nothing but the reading their offices, which were not so much as understood by many of them; and they taught the people nothing but the saying their paters and aves in Latin." P. 114. Bedell took the pains to learn himself the Irish language; and though he could not speak it, composed the first grammar ever made of it; had the common prayer read every Sunday in Irish, circulated catechisms, engaged the clergy to set up schools, and even undertook a translation of the Old Testament, which he would have published, but for the opposition of Laud and Strafford. P. 121.

now first began to have its course, the difference was still more acutely perceived.[1]

2. The first care of the new administration was to perfect the reduction of Ireland into a civilized kingdom. Sheriffs were appointed throughout Ulster; the territorial divisions of counties and baronies were extended to the few districts that still wanted them; the judges of assize went their circuits everywhere; the customs of tanistry and gavelkind were determined by the court of King's Bench to be void; the Irish lords surrendered their estates to the crown, and received them back by the English tenures of knight-service or socage; an exact account was taken of the lands each of these chieftains possessed, that he might be invested with none but those he occupied; while his tenants, exempted from those uncertain Irish exactions, the source of their servitude and misery, were obliged only to an annual quit-rent, and held their own lands by a free tenure. The king's writ was obeyed, at least in profession, throughout Ireland; after four centuries of lawlessness and misgovernment, a golden period was anticipated by the English courtiers; nor can we hesitate to recognise the influence of enlightened, and sometimes of benevolent minds, in the scheme of government now carried into effect.[2] But two unhappy maxims debased their motives, and discredited their policy; the first, that none but the true religion, or the state's religion, could be suffered to exist in the eye of the law; the second, that no pretext could be too harsh or iniquitous to exclude men of a different race or erroneous faith from their possessions.

3. The suppression of Slanes O'Neil's revolt in 1567 seems to have suggested the thought, or afforded the means, of perfecting the conquest of Ireland by the same methods that have been used to commence it,—an extensive plantation of English colonists. The law of forfeiture came in very conveniently to further this great scheme of policy

[1] Leland. 414, &c. In a letter from six catholic lords of the pale to the king in 1613, published in Desiderata Curiosa Hibernica, i. 158., they complain of the oath of supremacy, which, they say, had not been much imposed under the queen, but was now for the first time enforced in the remote parts of the country: so that the most sufficient gentry were excluded from magistracy, and meaner persons, if conformable, put instead. It is said on the other side, that the laws against recusants were very little enforced, from the difficulty of getting juries to present them. Id. 359. Carte's Ormond, 33. But this at least shows that there was some disposition to molest the catholics on the part of the government; and it is admitted that they were excluded from offices, and even from practising at the bar, on account of the oath of supremacy. Id. 320.: and compare the letter of six catholic lords, with the answer of lord deputy and council in the same volume.

[2] Davis's Reports, ubi, supra. Discovery of causes, &c. 260. Carte's Life of Ormond, i. 14. Leland, 418. It had long been an object of the English government to extinguish the Irish tenures and laws. Some steps towards it were taken under Henry VIII.; but at that time there was too great a repugnance among the chieftains. In Elizabeth's instructions to the earl of Sussex on taking the government in 1560, it is recommended that the Irish should surrender their estates, and receive grants in tail male, but no greater estate. Desiderata Curiosa Hibernica, i. 1. This would have left a reversion in the crown, which could not have been cut off, I believe, by suffering a recovery. But as those who held by Irish tenure had probably no right to alienate their lands, they had little cause to complain. An act in 1569, 12 Eliz. c. 4., reciting the greater part of the Irish to have petitioned for leave to surrender their lands, authorises the deputy, by advice of the privy council, to grant letters patent to the Irish and degenerate English, yielding certain reservations to the queen. Sidney mentions, in several of his letters, that the Irish were ready to surrender their lands. Vol. i. 94. 105. 165.

The act 11 Jac. I. c. 5. repeals divers statutes that treat the Irish as enemies, some of which have been mentioned above. It makes all the king's subjects under his protection to live by the same law. Some vestiges of the old distinctions remained in the statute-book, and were eradicated in Strafford's parliament. 10 & 11 Car. I. c. 6.

O'Neil was attainted in the parliament of 1569; the territories which acknowledged him as chieftain, comprising a large part of Down and Antrim, were vested in the crown; and a natural son of Sir Thomas Smith, secretary of state, who is said to have projected this settlement, was sent with a body of English to take possession of the lands thus presumed in law to be vacant. This expedition however failed of success; the native occupants not acquiescing in this doctrine of our lawyers. (Leland, 254.) But fresh adventurers settled in different parts of Ireland; and particularly after the earl of Desmond's rebellion in 1583, whose forfeiture was reckoned at 574,628 Irish acres, though it seems probable that this is more than double the actual confiscation.[1] These lands in the counties of Cork and Kerry, left almost desolate by the oppression of the Geraldines themselves, and the far greater cruelty of the government in subduing them, were parcelled out among English undertakers at low rents, but on condition of planting eighty-six families on an estate of 12,000 acres; and in like proportion for smaller possessions. None of the native Irish were to be admitted as tenants; but neither this nor the other conditions were strictly observed by the undertakers, and the colony suffered alike by their rapacity and their neglect. (Leland, ii. 301.) The oldest of the second race of English families in Ireland are found among the descendants of these Munster colonists. We find among them also some distinguished names, that have left no memorial in their posterity; sir Walter Raleigh, who here laid the foundation of his transitory success, and one not less in glory, and hardly less in misfortune, Edmund Spenser. In a country house once belonging to the Desmonds, on the banks of the Mulla, near Doneraile, the first three books of the Faery Queen were written; and here too the poet awoke to the sad realities of life, and has left us, in his Account of the State of Ireland, the most full and authentic document that illustrates its condition. This treatise abounds with judicious observations; but we regret the disposition to recommend an extreme severity in dealing with the native Irish, which ill becomes the sweetness of his muse.

The two great native chieftains of the north, the earls of Tyrone and Tyrconnel, a few years after the king's accession, engaged, or were charged with having engaged, in some new conspiracy, and flying from justice, were attainted of treason. Five hundred thousand acres in Ulster were thus forfeited to the crown; and on this was laid the foundation of that great colony, which has rendered that province, from being the seat of the wildest natives, the most flourishing, the most protestant, and the most enlightened part of Ireland. This plantation, though projected no doubt by the king and by lord Bacon, was chiefly carried into effect by the lord deputy, Sir Arthur Chichester, a man of great capacity, judgment, and prudence. He caused surveys to be taken of the several counties, fixed upon proper places for building castles or founding towns, and advised that the land should be assigned, partly to English or Scotch undertakers, partly to servitors of the crown, as they were called, men who had possessed civil or military offices in Ireland, partly to the old Irish, even some of those who had

[1] See a note in Leland, ii. 302. The truth seems to be, that in this, as in other Irish forfeitures, a large part was restored to the tenants of the attainted parties.

been concerned in Tyrone's rebellion. These and their tenants were exempted from the oath of supremacy imposed on the new planters. From a sense of the error committed in the queen's time by granting vast tracts to single persons, the lands were distributed in three classes, of 2000, 1500, and 1000 English acres; and in every county one half of the assignments was to the smallest, the rest to the other two classes. Those who received 2000 acres were bound within four years to build a castle and bawn, or strong court-yard; the second class within two years to build a stone or brick-house with a bawn; the third class a bawn only. The first were to plant on their lands within three years forty-eight able men, eighteen years old or upwards, born in England or the inland parts of Scotland; the others to do the same in proportion to their estates. All the grantees were to reside within five years, in person or by approved agents, and to keep sufficient store of arms; they were not alienate their lands without the king's licence, nor to let them for less than twenty-one years; their tenants were to live in houses built in the English manner, and not dispersed, but in villages. The natives held their lands by the same conditions, except that of building fortified houses; but they were bound to take no Irish exactions from their tenants, nor to suffer the practice of wandering with their cattle from place to place. In this manner were these escheated lands of Ulster divided among a hundred and four English and Scots undertakers, fifty-six servitors, and two hundred and eighty-six natives. All lands which through the late anarchy and change of religion had been lost to the church were restored; and some further provision was made for the beneficed clergy. Sir Arthur Chichester, as was just, received an allotment in a far ampler measure than the common servants of the crown.[1]

This noble design was not altogether completed according to the platform. The native Irish, to wh m some regard was shown by these regulations, were less equitably dealt with by the colonists, and by those other adventurers whom England continually sent forth to enrich themselves and maintain her sovereignty. Pretexts were sought to establish the crown's title over the possessions of the Irish; they were assailed through a law which they had but just adopted, and of which they knew nothing, by the claim of litigious and encroaching prerogative, against which no prescription could avail, nor any plea of fairness and equity obtain favour in the sight of English-born judges. Thus, in the King's and Queen's counties, and in those of Leitrim, Longford, and Westmeath, 385,000 acres were adjudged to the crown, and 66,000 in that of Wicklow. The greater part was indeed regranted to the native owners on a permanent tenure; and some apology might be found for this harsh act of power in the means it gave of civilizing those central regions, always the shelter of rebels and robbers; yet this did not take off the sense of forcible spoliation, which every foreign tyranny renders so intolerable. Surrenders were extorted by menaces; juries refusing to find the crown's title were fined by the council; many were dispossessed without any compensation, and

[1] Carte's Life of Ormond, i. 15. Leland, 429. Farmer's Chronicle of sir Arthur Chichester's government, in Desiderata Curiosa Hibernica, i. 32.; an important and interesting narrative; also vol. ii. of the same collection, 37. Bacon's Works, i. 657.

sometimes by gross perjury, sometimes by barbarous cruelty. It is said that in the county of Longford the Irish had scarcely one-third of their former possessions assigned to them, out of three-fourths which had been intended by the king. Those who had been most faithful, those even who had conformed to the protestant church, were little better treated than the rest. Hence, though in many new plantations great signs of improvement were perceptible, though trade and tillage increased, and towns were built, a secret rankling for those injuries was at the heart of Ireland; and in these two leading grievances, the penal laws against recusants, and the inquisition into defective titles, we trace, beyond a shadow of doubt, the primary source of the rebellion in 1641.[1]

4. Before the reign of James, Ireland had been regarded either as a conquered country, or as a mere colony of English, according to the persons or the provinces which were in question. The whole island now took a common character, that of a subordinate kingdom, inseparable from the English crown, and dependent also, at least as was taken for granted by our lawyers, on the English legislature; but governed after the model of our constitution, by nearly the same laws, and claiming entirely the same liberties. It was a natural consequence, that an Irish parliament should represent, or affect to represent, every part of the kingdom. None of Irish blood had ever sat, either lords or commoners, till near the end of Henry VIII.'s reign. The representation of the twelve counties, into which Munster and part of Leinster were divided, and of a few towns, which existed in the reign of Edward III., if not later, was reduced by the defection of so many English families to the limits of the four shires of the pale.[2] The old counties, when they returned to their allegiance under Henry VIII., and those afterwards formed by Mary and Elizabeth, increased the number of the commons: though in that of 1567, as has been mentioned, the writs for some of them were arbitrarily withheld. The two queens did not neglect to create new boroughs, in order to balance the more independent representatives of the old Anglo-Irish families by the English

[1] Leland, 437. 466. Carte's Ormond, 22. Desiderata Curiosa Hibernica, 238. 243. 378., et alibi, ii. 37. et post. In another treatise published in this collection, entitled a Discourse on the State of Ireland, 1614, an approaching rebellion is remarkably predicted. "The next rebellion, whensoever it shall happen, doth threaten more danger to the state than any that hath preceded; and my reasons are these; 1. They have the same bodies they ever had; and therein they have and had advantage over us. 2. From their infancies they have been and are exercised in the use of arms. 3. The realm, by reason of long peace, was never so full of youth as at this present. 4. That they are better soldiers than heretofore, their continual employments in the wars abroad assure us; and they do conceive that their men are better than ours. 5. That they are more politic, and able to manage rebellion with more judgment and dexterity than their elders, their experience and education are sufficient. 6. They will give the first blow; which is very advantageous to them that will give it. 7. The quarrel for which they rebel will be under the veil of religion and liberty, than which nothing is esteemed so precious in the hearts of men. 8. And lastly, their union is such, as not only the old English dispersed abroad in all parts of the realm, but the inhabitants of the pale cities and towns, are as apt to take arms against us, which no precedent time hath ever seen, as the ancient Irish." Vol. i. 432. "I think that little doubt is to be made, but that the modern English and Scotch would in an instant be massacred in their houses." P. 438. This rebellion the author expected to be brought about by a league with Spain, and with aid from France.

[2] The famous parliament of Kilkenny, in 1367, is said to have been very numerously attended. Leland. i. 319. We find indeed an act, 10 H. VII. c. 23., annulling what was done in a preceding parliament, for this reason, among others, that the writs had not been sent to all the shires, but to four only. Yet it appears that the writs if issued would not have been obeyed in that age.

retainers of the court. Yet it is said, that in seventeen counties out of thirty-two, into which Ireland was finally parcelled, there was no town that returned burgesses to parliament before the reign of James I., and the whole number in the rest was about thirty.[1] He created at once forty new boroughs, or possibly rather more; for the number of the commons, in 1613, appears to have been 232.[2] It was several times afterwards augmented, and reached its complement of 300 in 1692.[3] These grants of the elective franchise were made, not indeed improvidently, but with very sinister intents towards the freedom of parliament; two thirds of an Irish house of commons, as it stood in the eighteenth century, being returned with the mere farce of election by wretched tenants of the aristocracy.

The province of Connaught, with the adjoining county of Clare, was still free from the intrusion of English colonists. The Irish had complied, both under Elizabeth and James, with the usual conditions of surrendering their estates to the crown in order to receive them back by a legal tenure. But as these grants, by some negligence, had not been duly enrolled in Chancery, though the proprietors had paid large fees for that security, the council were not ashamed to suggest, or the king to adopt, an iniquitous scheme of declaring the whole country forfeited, in order to form another plantation as extensive as that of Ulster. The remonstrances of those whom such a project threatened put a present stop to it; and Charles, on ascending the throne, found it better to hear the proposals of his Irish subjects for a composition. After some time, it was agreed between the court and the Irish agents in London, that the kingdom should voluntarily contribute 120,000*l.* in three years by equal payments, in return for certain graces, as they were called, which the king was to bestow. These went to secure the subject's title to his lands against the crown after sixty years' possession, and gave the people of Connaught leave to enrol their grants, relieving also the settlers in Ulster or other places from the penalties they had incurred by similar neglect. The abuses of the council-chamber in meddling with private causes, the oppression of the court of wards, the encroachments of military authority and excesses of the soldiers were restrained. A free trade with the king's dominions or those of friendly powers was admitted. The recusants were allowed to sue for livery of their estates in the court of wards, and to practise in courts of law, on taking an oath of mere allegiance instead of that of supremacy. Unlawful exactions and severities of the clergy were prohibited. These

[1] Speech of sir John Davis (1612), on the parliamentary constitution of Ireland, in Appendix to Leland, vol. ii. p. 490, with the latter's observations on it. Carte's Ormond, i. 18. Lord Mountmorres's Hist. of Irish Parliament.

[2] In the letter of the Lords of the pale to king James above mentioned, they express their apprehension that the erecting so many insignificant places to the rank of boroughs was with the view of bringing on fresh penal laws in religion; "and so the general scope and institution of parliament frustrated; they being ordained for the assurance of the subjects not to be pressed with any new edicts or laws, but such as should pass with their general consents and approbations." P. 158. The king's mode of replying to this constitutional language was characteristic. "What is it to you whether I make many or few boroughs? My council may consider the fitness, if I require it. But what if I had created 40 noblemen and 400 boroughs? The more the merrier, the fewer the better cheer." Desid. Cur. Hib. 308.

[3] Mountmorres, i. 166. The whole number of peers in 1634 was 122, and those present in parliament that year were 66. They had the privilege not only of voting, but even protesting by proxy; and those who sent none were sometimes fined. Id. vol. i. 316.

reformations of unquestionable and intolerable evils, as beneficial as those contained nearly at the same moment in the Petition of Right, would have saved Ireland long ages of calamity, if they had been as faithfully completed as they seemed to be graciously conceded. But Charles I. emulated, on this occasion, the most perfidious tyrants. It had been promised by an article in these graces, that a parliament should be held to confirm them. Writs of summons were accordingly issued by the lord deputy; but with no consideration of that fundamental rule established by Poyning's law, that no parliament should be held in Ireland until the king's licence be obtained. This irregularity was of course discovered in England, and the writs of summons declared to be void. It would have been easy to remedy this mistake, if such it were, by proceeding in the regular course with a royal licence. But this was withheld; no parliament was called for a considerable time; and when the three years had elapsed during which the voluntary contribution had been payable, the king threatened to straiten his graces, if it were not renewed. (Carte's Ormond, vol. i. p. 48. Leland, vol. ii. p. 475. et post.)

He had now placed in the vice-royalty of Ireland that star of exceeding brightness, but sinister influence, the willing and able instrument of despotic power, lord Strafford. In his eyes the country he governed belonged to the crown by right of conquest; neither the original natives, nor even the descendants of the conquerors themselves, possessing any privileges which could interfere with its sovereignty. He found two parties extremely jealous of each other, yet each loth to recognise an absolute prerogative, and thus in some measure having a common cause. The protestants, not a little from bigotry, but far more from a persuasion that they held their estates on the tenure of a rigid religious monopoly, could not endure to hear of a toleration of popery, which, though originally demanded, was not even mentioned in the king's graces; and disapproved the indulgence shown by those graces to recusants, which is said to have been followed by an impolitic ostentation of the Romish worship.[1] They objected to a renewal of the contribution, both as the price of this dangerous tolerance of recusancy, and as debarring the protestant subjects of their constitutional right to grant money only in parliament. Wentworth, however, insisted upon its payment for another year, at the expiration of which a parliament was to be called.[2]

[1] Leland, iii. 4. et post. A vehement protestation of the bishops about this time, with Usher at their head, against any connivance at popery, is a disgrace to their memory. It is to be met with in many books. Strafford, however, was far from any real liberality of sentiment. His abstinence from religious persecution was intended to be temporary, as the motives whereon it was founded. "It will be ever far forth of my heart to conceive that a conformity in religion is not above all other things principally to be intended. For undoubtedly till we be brought all under one form of divine service the crown is never safe on this side, &c. It were too much at once to distemper them by bringing plantations upon them, and disturbing them in the exercise of their religion, so long as it be without scandal; and so indeed very inconsiderate, as I conceive, to move in this latter, till that former be fully settled, and by that means the protestant party become by much the stronger, which in truth I do not yet conceive it to be." Straff. Letters, ii. 39. He says, however, and I believe truly, that no man had been touched for conscience sake since he was deputy. Id. 112. Every parish, as we find by Bedell's Life, had its priest and mass-house; in some places mass was said in the churches; the Romish bishops exercised their jurisdiction, which was fully obeyed; but "the priests were grossly ignorant and openly scandalous, both for drunkenness and all sort of lewdness." P. 41. 76. More than ten to one in his diocese, the county of Cavan, were recusants.

[2] Some of the council-board having intimated a doubt of their authority to bind the kingdom,

The king did not come without reluctance into this last measure, hating as he did, the very name of parliament; but the lord deputy confided in his own energy to make it innoxious and serviceable. They conspired together how to extort the most from Ireland, and concede the least; Charles, in truth, showing a most selfish indifference to anything but his own revenue, and a most dishonourable unfaithfulness to his word. (Id. i. 183. Carte, 61.) The parliament met in 1634, with a strong desire of insisting on the confirmation of the graces they had already paid for; but Wentworth had so balanced the protestant and recusant parties, employed so skilfully the resources of fair promises and intimidation, that he procured six subsidies to be granted before a prorogation, without any mutual concession from the crown.[1] It had been agreed that a second session should be held for confirming the graces; but in this, as might be expected, the supplies having been provided, the request of both houses that they might receive the stipulated reward met with a cold reception; and ultimately the most essential articles, those establishing a sixty years' prescription against the crown, and securing the titles of proprietors in Clare and Connaught, as well as those which relieved the catholics in the court of wards from the oath of supremacy, were laid aside. Statutes, on the other hand, were borrowed from England, especially that of uses, which cut off the methods they had hitherto employed for evading the law's severity.[2]

Strafford had always determined to execute the project of the late reign with respect to the western counties. He proceeded to hold an inquisition in each county of Connaught, and summoned juries in order to preserve a mockery of justice in the midst of tyranny. They were

"I was then put to my last refuge, which was plainly to declare that there was no necessity which induced me to take them to counsel in this business, for rather than fail in so necessary a duty to my master, I would undertake, upon the peril of my head, to make the king's army able to subsist, and to provide for itself amongst them, without their help." Strafford Letters, vol. i. p. 98.

[1] The protestants, he wrote word, had a majority of eight in the commons. He told them, "it was very indifferent to him what resolution the house might take; that there were two ends he had in view, and one he would infallibly attain,—either a submission of the people to his majesty's just demands, or a just occasion of breach, and either would content the king; the first was undeniably and evidently best for them." Id. 277, 278. In his speech to the two houses, he said, "His majesty expects not to find you muttering, or to name it more truly, mutinying in corners. I am commanded to carry a very watchful eye over these private and secret conventicles, to punish the transgression with a heavy and severe hand; therefore it behoves you to look to it." Id. 289. "Finally," he concludes, "I wish you had a right judgment in all things; yet let me not prove a Cassandra amongst you, to speak truth and not be believed. However, speak truth I will, were I to become your enemy for it. Remember therefore that I tell you, you may easily make or mar this parliament. If you proceed with respect, without laying clogs and conditions upon the king, as wise men and good subjects ought to do, you shall infallibly set up this parliament eminent to posterity, as the very basis and foundation of the greatest happiness and prosperity that ever befell this nation. But, if you meet a great king with narrow circumscribed hearts, if you will needs be wise and cautious above the moon [sic], remember again that I tell you, you shall never be able to cast your mists before the eyes of a discerning king; you shall be found out; your sons shall wish they had been the children of more believing parents; and in a time when you look not for it, when it will be too late for you to help, the sad repentance of an unadvised heart shall be yours, lasting honour shall be my master's."

These subsidies were reckoned at near 41,000*l.* each, and were thus apportioned: Leinster paid 13,000*l.* (of which 1000*l.* from the city of Dublin), Munster 11,000*l.*, Ulster 10,000*l.*, Connaught 6,800*l.* Mountmorres, ii. 16.

[2] Irish Statutes. 10 Car. 1. c. 1. 2. 3. &c. Strafford Letters, i. 279. 312. The king expressly approved the denial of the graces, though promised formerly by himself. Id. 345. Leland, iii. 20.

"I can now say," Strafford observes, (Id. 344.), "the king is as absolute here as any prince in the whole world can be; and may still be, if it be not spoiled on that side."

required to find the king's title to all the lands, on such evidence as could be found and was thought fit to be laid before them; and were told, that what would be best for their own interests would be to return such a verdict as the king desired, what would be best for his, to do the contrary; since he was able to establish it without their consent, and wished only to invest them graciously with a large part of what they now unlawfully withheld from him. These menaces had their effect in all counties except that of Galway, where a jury stood out obstinately against the crown, and being in consequence, as well as the sheriff, summoned to the castle in Dublin, were sentenced to an enormous fine. Yet the remonstrances of the western proprietors were so clamorous that no steps were immediately taken for carrying into effect the designed plantation; and the great revolutions of Scotland and England which soon ensued gave another occupation to the mind of lord Strafford.[1] It has never been disputed that a more uniform administration of justice in ordinary cases, a stricter coercion of outrage, a more extensive commerce, evidenced by the augmentation of customs, above all the foundation of the great linen manufacture in Ulster, distinguished the period of his government.[2] But it is equally manifest that neither the reconcilement of parties, nor their affection to the English crown, could be the result of his arbitrary domination; and that, having healed no wound he found, he left others to break out after his removal. The despotic violence of this minister towards private persons, and those of great eminence, is in some instances well known by the proceedings on his impeachment, and in others is sufficiently familiar by our historical and biographical literature. It is indeed remarkable that we find among the objects of his oppression and insult all that most illustrates the contemporary annals of Ireland, the venerable learning of Usher, the pious integrity of Bedell, the experienced wisdom of Cork, and the early virtue of Clanricarde.

The parliament assembled by Strafford in 1640 began with loud professions of gratitude to the king for the excellent governor he had appointed over them; they voted subsidies to pay a large army raised to serve against the Scots, and seemed eager to give every manifestation of zealous loyalty.[3] But after their prorogation, and during the summer of that year, as rapid a tendency to a great revolution became visible as in England; the commons, when they met again, seemed no longer the same men; and, after the fall of their great viceroy, they coalesced with his English enemies to consummate his destruction. Hate long smothered by fear, but inflamed by the same cause, broke forth in a remonstrance of the commons, presented through a committee, not to the king, but a superior power, the Long Parliament of England. The two houses united to avail themselves of the advantageous moment, and to extort, as they very justly might, from the necessities of Charles that confirmation of his promises which had been refused in his prosperity. Both parties, catholic as well as protestant,

[1] Strafford Letters, i. 353. 370. 402. 442. 451. 454. 473.; ii. 113. 139. 366. Leland, iii. 30, 39. Carte, 82.

[2] It is however true that he discouraged the woollen manufacture, in order to keep the kingdom more dependent, and that this was part of his motive in promoting the other. Vol. ii. 19.

[3] Leland, iii. 51. Strafford himself (ii. 397.) speaks highly of their disposition.

acted together in this national cause, shunning for the present to bring forward those differences which were not the less implacable for being thus deferred. The catalogue of temporal grievances was long enough to produce this momentary coalition: it might be groundless in some articles, it might be exaggerated in more, it might in many be of ancient standing; but few can pretend to deny that it exhibits a true picture of the misgovernment of Ireland at all times, but especially under the earl of Strafford. The king, in May, 1641, consented to the greater part of their demands; but unfortunately they were never granted by law.[1]

But the disordered condition of his affairs gave encouragement to hopes far beyond what any parliamentary remonstrances could realize: hopes long cherished when they had seemed vain to the world, but such as courage and bigotry and resentment would never lay aside. The court of Madrid had not abandoned its connexion with the disaffected Irish, especially of the priesthood; the son of Tyrone, and many followers of that cause, served in its armies; and there seems much reason to believe that in the beginning of 1641 the project of insurrection was formed among the expatriated Irish, not without the concurrence of Spain, and perhaps of Richelieu.[2] The government had passed from the vigorous hands of Strafford into those of two lords justices, sir William Parsons and sir John Borlase, men by no means equal to the critical circumstances wherein they were placed, though possibly too severely censured by those who do not look at their extraordinary difficulties with sufficient candour. The primary causes of the rebellion are not to be found in their supineness or misconduct, but in the two great sins of the English government; in the penal laws as to religion which pressed on almost the whole people, and in the systematic iniquity which despoiled them of their possessions. They could not be expected to miss such an occasion of revolt; it was an hour of revolution, when liberty was won by arms, and ancient laws were set at

[1] Carte's Ormond, 100. 140. Leland, iii. 54. et post. Mountmorres, ii. 29. A remonstrance of the commons to lord-deputy Wandesford against various grievances was presented 7th Nov., 1640, before lord Strafford had been impeached. Id. 39. As to confirming the graces, the delay, whether it proceeded from the king or his Irish representatives, seems to have caused some suspicion. Lord Clanricarde mentions the ill consequences that might result, in a letter to lord Bristol. Carte's Ormond, iii. 40.

[2] Sir Henry Vane communicated to the lords justices, by the king's command, Mar. 16. 1640-41, that advice had been received and confirmed by the ministers in Spain and elsewhere, which "deserved to be seriously considered, and an especial care and watchfulness to be had therein: that of late there have passed from Spain (and the like may well have been from other parts) an unspeakable number of Irish churchmen for England and Ireland, and some good old soldiers, under pretext of asking leave to raise men for the king of Spain; whereas, it is observed among the Irish friars there, a whisper was, as if they expected a rebellion in Ireland, and particularly in Connaught." Carte's Ormond, iii. 30. This letter, which Carte seems to have taken from a printed book, is authenticated in Clarendon State Papers, ii. 143. I have mentioned in another part of this work, Chap. VIII., the provocations which might have induced the cabinet of Madrid to foment disturbances in Charles's dominions. The lords justices are taxed by Carte with supineness in paying no attention to this letter, vol. i. 166.; but how he knew that they paid none seems hard to say.

Another imputation has been thrown on the Irish government and on the parliament, for objecting to permit levies to be made for the Spanish service out of the army raised by Strafford, and disbanded in the spring of 1641, which the king had himself proposed. Carte, i. 133.; and Leland, 82., who follows the former implicitly, as he always does. The event indeed proved that it would have been far safer to let those soldiers, chiefly catholics, enlist under a foreign banner; but considering the long connexion of Spain with that party, and the apprehension always entertained that the disaffected might acquire military experience in her service, the objection does not seem so very unreasonable.

nought; the very success of their worst enemies, the covenanters in Scotland, seemed the assurance of their own victory, as it was the reproach of their submission.[1]

The rebellion broke out, as is well known, by a sudden massacre of the Scots and English in Ulster, designed no doubt by a vindictive and bigoted people to extirpate those races, and, if contemporary authorities are to be credited, falling little short of this in its execution. Their evident exaggeration has long been acknowledged: but possibly the scepticism of later writers has extenuated rather too much the horrors of this massacre.[2] It was certainly not the crime of the catholics generally; nor, perhaps, in the other provinces of Ireland are they chargeable with more cruelty than their opponents.[3] Whatever

[1] The fullest writer on the Irish rebellion is Carte, in his Life of Ormond, who had the use of a vast collection of documents belonging to that noble family; a selection from which forms his third volume. But he is extremely partial against all who leaned to the parliamentary or puritan side, and especially the lords justices, Parsons and Borlase; which renders him, to say the least, a very favourable witness for the catholics. Leland, with much candour towards the latter, but a good deal of the same prejudice against the presbyterians, is little more than the echo of Carte. A more vigorous, though less elegant historian, is Warner, whose impartiality is at least equal to Leland's, and who may perhaps, upon the whole, be reckoned the best modern authority. Sir John Temple's History of Irish Rebellion, and lord Clanricarde's Letters, with a few more of less importance, are valuable contemporary testimonies.

The catholics themselves might better leave their cause to Carte and Leland than excite prejudices instead of allaying them by such a tissue of misrepresentation and disingenuousness as Curry's Historical Account of the Civil Wars in Ireland.

[2] Sir John Temple reckons the number of protestants murdered, or destroyed in some manner, from the breaking out of the rebellion in Oct., 1641, to the cessation in Sept., 1643, at three hundred thousand, an evident and enormous exaggeration; so that the first edition being incorrectly printed, we might almost suspect a cipher to have been added by mistake, p. 15. (edit. Maseres). Clarendon says forty or fifty thousand were murdered in the first insurrection. Sir William Petty, in his Political Anatomy of Ireland, from calculations too vague to deserve confidence, puts the number massacred at thirty-seven thousand. Warner has scrutinized the examinations of witnesses, taken before a commission appointed in 1643, and now deposited in the library of Trinity College, Dublin; and, finding many of the depositions unsworn, and others founded on hearsay, has thrown more doubt than any earlier writer on the extent of the massacre. Upon the whole, he thinks twelve thousand lives of protestants the utmost that can be allowed for the direct or indirect effects of the rebellion, during the two first years, except losses in war (History of Irish Rebellion, p. 397.), and of these only one third by murder. It is to be observed, however, that no distinct accounts could be preserved in formal depositions of so promiscuous a slaughter, and that the very exaggerations show its tremendous nature. The Ulster colony, a numerous and brave people, were evidently unable to make head for a considerable time against the rebels; which could hardly have been, if they had only lost a few thousands. It is idle to throw an air of ridicule (as is sometimes attempted) on the depositions, because they are mingled with some fabulous circumstances, such as the appearance of the ghosts of the murdered on the bridge at Cavan; which, by the way, is only told, in the depositions subjoined to Temple, as the report of the place, and was no cold-blooded fabrication, but the work of a fancy bewildered by real horrors.

Carte, who dwells at length on every circumstance unfavourable to the opposite party, despatches the Ulster massacre in a single short paragraph, and coolly remarks, that there were not many murders, "*considering the nature of such an affair*," in the first week of the insurrection. Life of Ormond, i. 175—177. This is hardly reconcilable to fair dealing. Curry endeavours to discredit even Warner's very moderate estimate; and affects to call him in one place, p. 184., "a writer highly prejudiced against the insurgents," which is grossly false. He praises Carte and Nalson, the only protestants he does praise, and bestows on the latter the name of impartial. I wonder he does not say that not one protestant was murdered. Dr. Lingard has lately given a short account of the Ulster rebellion (Hist. of England, x. 154.), omitting all mention of the massacre, and endeavouring, in a note at the end of the volume, to disprove, by mere scraps of quotation, an event of such notoriety, that we must abandon all faith in public fame if it were really unfounded.

[3] Carte, i. 253. 266.; iii. 51. Leland, 154. Sir Charles Coote and Sir William St. Leger are charged with great cruelties in Munster. The catholic confederates spoke with abhorrence of the Ulster massacre. Leland, 161. Warner, 203. They behaved, in many parts, with humanity; nor indeed do we find frequent instances of violence, except in those counties where the proprietors had been dispossessed.

may have been the original intention of the lords of the pale, or of the Anglo-Irish professing the old religion in general (which has been a problem in history), a few months only elapsed before they were almost universally engaged in the war.[1] The old distinctions of Irish and English blood were obliterated by those of religion; and it became a desperate contention whether the majority of the nation should be trodden to the dust by forfeiture and persecution, or the crown lose every thing beyond a nominal sovereignty over Ireland. The insurgents, who might once perhaps have been content with a repeal of the penal laws, grew naturally in their demands through success, or rather through the inability of the English government to keep the field, and began to claim the entire establishment of their religion; terms in themselves not unreasonable, nor apparently disproportionate to their circumstances, and which the king was, in his distress, nearly ready to concede, but such as never could have been obtained from a third party, of whom they did not sufficiently think, the parliament and people of England. The commons had, at the very beginning of the rebellion, voted that all the forfeited estates of the insurgents should be allotted to such as should aid in reducing the island to obedience; and thus rendered the war desperate on the part of the Irish.[2] No great efforts were made, however, for some years; but, after the king's person had fallen into their hands, the victorious party set themselves in earnest to effect the conquest of Ireland. This was achieved by Cromwell and his powerful army after several years, with such bloodshed and rigour that, in the opinion of lord Clarendon, the sufferings of that nation,

[1] Carte and Leland endeavour to show that the Irish of the pale were driven into rebellion by the distrust of the lords justices, who refused to furnish them with arms, after the revolt in Ulster, and permitted the parliament to sit for one day only, in order to publish a declaration against the rebels. But the prejudice of these writers is very glaring. The insurrection broke out in Ulster, Oct. 23. 1641; and in the beginning of Dec., the lords of the pale were in arms. Surely this affords some presumption that Warner has reason to think them privy to the rebellion, or, at least, not very averse to it. P. 146. And with the suspicion that might naturally attach to all Irish catholics, could Borlase and Parsons be censurable for declining to intrust them with arms, or rather for doing so with some caution? Temple, 56. If they had acted otherwise, we should certainly have heard of their incredible imprudence. Again, the catholic party in the house of commons were so cold in their loyalty, to say the least, that they objected to giving any appellation to the rebels worse than that of discontented gentlemen. Leland, 140. See too Clanricarde's Letters, p. 33, etc. In fact, several counties of Leinster and Connaught were in arms before the pale.

It has been thought by some that the lords justices had time enough to have quelled the rebellion in Ulster before it spread farther. Warner, 130. Of this, as I conceive, we should not pretend to judge confidently. Certain it is that the whole army in Ireland was very small, consisting of only 943 horse, and 2297 foot. Temple, 32. Carte, 194. I think Sir John Temple has been unjustly depreciated; he was master of the rolls in Ireland at the time, and a member of the council,—no bad witness for what passed in Dublin; and he makes out a complete justification, as far as appears, for the conduct of the lords justices and council towards the lords of the pale and the catholic gentry. Nobody alleges that Parsons and Borlase were men of as much energy as lord Strafford; but those who sit down in their closets, like Leland and Warner, more than a century afterwards, to lavish the most indignant contempt on their memory, should have reflected a little on the circumstances.

[2] "I perceived (says Preston, general of the Irish, writing to lord Clanricarde), that the catholic religion, the rights and prerogatives of his majesty, my dread sovereign, the liberties of my country, and whether there should be an Irishman or no, were the prizes at stake." Carte, iii. 120. Clanricarde himself expresses to the king, and to his brother, lord Essex, in Jan., 1642, his apprehension that the English parliament meant to make it a religious war. Clanricarde's Letters, 61. et post. The letters of this great man, perhaps the most unsullied character in the annals of Ireland, and certainly more so than even his illustrious contemporary, the duke of Ormond, exhibit the struggles of a noble mind between love of his country and his religion on the one hand, loyalty and honour on the other. At a later period of that unhappy war, he thought himself able to conciliate both principles.

from the outset of the rebellion to its close, have never been surpassed but by those of the Jews in their destruction by Titus.

At the restoration of Charles II. there were in Ireland two people, one either of native, or old English blood, the other of recent settlement; one catholic, the other protestant; one humbled by defeat, the other insolent with victory; one regarding the soil as his ancient inheritance, the other as his acquisition and reward. There were three religions; for the Scots of Ulster and the army of Cromwell had never owned the episcopal church, which for several years had fallen almost as low as that of Rome. There were claims, not easily set aside on the score of right, to the possession of lands, which the entire island could not satisfy. In England, little more had been necessary than to revive a suspended constitution: in Ireland, it was something beyond a new constitution and code of law that was required; it was the titles and boundaries of each man's private estate that were to be litigated and adjudged. The episcopal church was restored with no delay, as never having been abolished by law; and a parliament, containing no catholics, and not many vehement nonconformists, proceeded to the great work of settling the struggles of opposite claimants, by a fresh partition of the kingdom. (Carte, ii. 221. Leland, 420.)

The king had already published a declaration for the settlement of Ireland, intended as the basis of an act of parliament. The adventurers, or those who, on the faith of several acts passed in England in 1642, with the assent of the late king, had advanced money for quelling the rebellion, in consideration of lands to be allotted to them in certain stipulated proportions, and who had, in general, actually received them from Cromwell, were confirmed in all the lands possessed by them on the 7th of May, 1659; and all the deficiencies were to be supplied before the next year. The army was confirmed in the estates already allotted for their pay, with an exception of church lands and some others. Those officers who had served in the royal army against the Irish before 1649 were to be satisfied for their pay, at least to the amount of five eighths, out of lands to be allotted for that purpose. Innocent papists, that is, such as were not concerned in the rebellion, and whom Cromwell had arbitrarily transplanted into Connaught, were to be restored to their estates, and those who possessed them to be indemnified. Those who had submitted to the peace of 1648, and had not been afterwards in arms, if they had not accepted lands in Connaught, were also to be restored, as soon as those who now possessed them should be satisfied for their expenses. Those who had served the king abroad, and thirty-six enumerated persons of the Irish nobility and gentry, were to be put on the same footing as the last. The precedency of restitution, an important point where the claims exceeded the means of satisfying them, was to be in the order above specified. (Carte, ii. 216. Leland, 414.)

This declaration was by no means pleasing to all concerned. The loyal officers, who had served before 1649, murmured that they had little prospect of more than twelve shillings and sixpence in the pound, while the republican army of Cromwell would receive the full value. The Irish were more loud in their complaints; no one was to be held innocent who had been in the rebel quarters before the cessation of

1643 ; and other qualifications were added so severe, that hardly any could expect to come within them. In the house of commons the majority, consisting very much of the new interests, that is, of the adventurers and army, were in favour of adhering to the declaration. In the house of lords it was successfully urged, that, by gratifying the new men to the utmost, no fund would be left for indemnifying the loyalists, or the innocent Irish. It was proposed, that, if the lands not yet disposed of should not be sufficient to satisfy all the interests for which the king had meant to provide by his declaration, there should be a proportional defalcation out of every class for the benefit of the whole. These discussions were adjourned to London, where delegates of the different parties employed every resource of intrigue at the English court. The king's bias towards the religion of the Irish had rendered him their friend; and they seemed, at one time, likely to reverse much that had been intended against them ; but their agents grew rash with hope, assumed a tone of superiority which ill became their condition, affected to justify their rebellion, and finally so much disgusted their sovereign that he ordered the act of settlement to be sent back with little alteration, except the insertion of some more Irish nominees. (Carte, 222. et post. Leland, 420. et post.)

The execution of this act was entrusted to English commissioners, from whom it was reasonable to hope for an impartiality which could not be found among the interested classes. Notwithstanding the rigorous proofs nominally exacted, more of the Irish were pronounced innocent than the commons had expected ; and the new possessors having the sway of that assembly, a clamour was raised that the popish interest had prevailed ; some talked of defending their estates by arms, some even meddled in fanatical conspiracies against the government ; it was insisted that a closer inquisition should be made, and stricter qualifications demanded. The manifest deficiency of lands to supply all the claimants for whom the act of settlement provided, made it necessary to resort to a supplemental measure, called the act of explanation. The adventurers and soldiers relinquished one third of the estates enjoyed by them on the 7th May, 1659. Twenty Irish nominees were added to those who were to be restored by the king's favour ; but all those who had not already been adjudged innocent, more than three thousand in number, were absolutely cut off from any hope of restitution. The great majority of these no question were guilty ; yet they justly complained of this confiscation without a trial. (Carte, 258–316. Leland, 431. et post.) Upon the whole result, the Irish catholics having previously held about two thirds of the kingdom, lost more than one half of their possessions by forfeiture on account of their rebellion. If we can rely at all on the calculations, made almost in the infancy of political arithmetic by one of its most diligent investigators, they were diminished also by much more than one third through the calamities of that period.[1]

[1] The statements of lands forfeited and restored, under the execution of the act of settlement are not the same in all writers. Sir William Petty estimates the superficies of Ireland at 10,500,000 Irish acres (being to the English measure nearly as eight to thirteen), whereof 7,500,000 are of good land, the rest being moor, bog, and lake. In 1641, the estates of the protestant owners and of the church were about one third of these cultivable lands, those of

It is more easy to censure the particular inequalities, or even, in some respects, injustice of the act of settlement, than to point out what better course was to have been adopted. The readjustment of all private rights after so entire a destruction of their landmarks could only be effected by the coarse process of general rules. Nor does it appear that the catholics, considered as a great mass, could reasonably murmur against the confiscation of half their estates, after a civil war wherein it is evident that so large a proportion of themselves were concerned.[1] Charles, it is true, had not been personally resisted by the insurgents; but, as chief of England, he stood in the place of Cromwell, and equally represented the sovereignty of the greater island over the lesser, which under no form of government it would concede.

The catholics, however, thought themselves oppressed by the act of settlement; and could not forgive the duke of Ormond for his constant regard to the protestant interests, and the supremacy of the English crown. They had enough to encourage them in the king's bias towards their religion, which he was able to manifest more openly than in England. Under the administration of lord Berkely in 1670, at the time of Charles's conspiracy with the king of France to subvert religion and liberty, they began to menace an approaching change, and to aim at revoking, or materially weakening, the act of settlement. The most bigoted and insolent of the popish clergy, who had lately rejected with indignation an offer of more reasonable men to renounce the tenets obnoxious to civil governments, were countenanced at Dublin; but the first alarm of the new proprietors, as well as the general apprehension of the court's designs in England, soon rendered it necessary to desist from the projected innovations. (Carte, ii. 414. et post. Leland, 458. et post.) The next reign, of course, reanimated the Irish party; a dispensing prerogative set aside all the statutes; every civil office, the courts of justice, and the privy council, were filled with catholics; the protestant soldiers were disbanded; the citizens of that religion were disarmed; the tithes were withheld from the clergy; they were suddenly reduced to feel that bitter condition of a conquered and proscribed people, which they had long rendered the lot of their enemies.[2] From these enemies, exasperated by bigotry and revenge, they could have

catholics two thirds. The whole of the latter were seized or sequestered by Cromwell and the parliament. After summing up the allotments made by the commissioners under the act of settlement, he concludes that, in 1672, the English, protestants, and church, have 5.140.000 acres, and the papists nearly half as much. Political Anatomy of Ireland, c. 1. In lord Orrery's Letters, i. 187. et post., is a statement, which seems not altogether to tally with sir William Petty's; nor is that of the latter clear and consistent in all its computations. Lawrence, author of "The Interest of Ireland Stated," a treatise published in 1682, says, "of 10,868,949 acres, returned by the last survey of Ireland, the Irish papists are possessed but of 2.041,108 acres, which is but a small matter above the fifth part of the whole." Part ii. p. 48. But, as it is evidently below one fifth, there must be some mistake. I suspect that in one of these sums he reckoned the whole extent, and in the other only cultivable lands. Lord Clare, in his celebrated speech on the Union, greatly overrates the confiscations.

Petty calculates that above 500,000 of the Irish "perished and were wasted by the sword, plague, famine, hardship, and banishment, between the 23rd day of Oct., 1641, and the same day 1652;" and conceives the population of the island in 1641 to have been nearly 1,500,000, including protestants. But his conjectures are prodigiously vague.

[1] Petty is as ill-satisfied with the restoration of lands to the Irish, as they could be with the confiscations. "Of all that claimed innocency, seven in eight obtained it. The restored persons have more than what was their own in 1641, by at least one fifth. Of those adjudged innocents, not one in twenty was really so."

[2] Leland, 493. et post. Mazure, Hist. de la Révolut. ii. 113.

nothing but a full and exceeding measure of retaliation to expect; nor had they even the last hope that an English king, for the sake of his crown and country, must protect those who formed the strongest link between the two islands. A man violent and ambitious, without superior capacity, the earl of Tyrconnel, lord lieutenant in 1687, and commander of the army, looked only to his master's interests, in subordination to those of his countrymen, and of his own. It is now ascertained that, doubtful of the king's success in the struggle for restoring popery in England, he had made secret overtures to some of the French agents for casting off all connexion with that kingdom, in case of James's death, and, with the aid of Louis, placing the crown of Ireland on his own head.[1] The revolution in England was followed by a war in Ireland of three years' duration, and a war on both sides, like that of 1641, for self-preservation. In the parliament held by James at Dublin, in 1690, the act of settlement was repealed, and above 2000 persons attainted by name; both, it has been said, perhaps with little truth, against the king's will, who dreaded the impetuous nationality that was tearing away the bulwarks of his throne.[2] But the magnanimous defence of Derry and the splendid victory of the Boyne restored the protestant cause; though the Irish, with the succour of French troops, maintained for two years a gallant resistance, they could not ultimately withstand the triple superiority of military talents, resources, and discipline. Their bravery, however, served to obtain the articles of Limerick on the surrender of that city; conceded by their noble-minded conqueror, against the disposition of those who longed to plunder and persecute their fallen enemy. By the first of these articles, "the Roman catholics of this kingdom shall enjoy such privileges in the exercise of their religion as are consistent with the laws of Ireland, or as they did enjoy in the reign of king Charles II.; and their majesties, as soon as their affairs will permit them to summon a parliament in this kingdom, will endeavour to procure the said Roman catholics such further security in that particular as may preserve them from any disturbance upon the account of their said religion." The second secures to the inhabitants of Limerick and other places then in possession of the Irish, and to all officers and soldiers then in arms, who should return to their majesties' obedience, and to all such as should be under their protection in the counties of Limerick, Kerry, Clare, Galway, and Mayo, all their estates, and all their rights, privileges, and immunities, which they held in the reign of Charles II., free from all forfeitures or outlawries incurred by them.[3]

This second article, but only as to the garrison of Limerick or other persons in arms, is confirmed by statute some years afterwards. (Irish

[1] M. Mazure has brought this remarkable fact to light. Bonrepas, a French emissary in England, was authorized by his court to proceed in a negotiation with Tyrconnel for the separation of the two islands, in case that a protestant should succeed to the crown of England. He had accordingly a private interview with a confidential agent of the lord lieutenant at Chester, in the month of Oct., 1687. Tyrconnel undertook that in less than a year every thing should be prepared. Id. ii. 281. 288.; iii. 430.

[2] Leland, 537. This seems to rest on the authority of Leslie, which is by no means good. Some letters of Barillon, in 1687, show that James had intended the repeal of the act of settlement. Dalrymple, 257. 263.

[3] See the articles at length in Leland, 619. Those who argue from the treaty of Limerick against any political disabilities subsisting at present do injury to a good cause.

Stat. 9 Will. III. c. 2.) The first article seems, however, to be passed over. The forfeitures on account of the rebellion, estimated at 1,060,792 acres, were somewhat diminished by restitutions to the ancient possessors under the capitulation; the greater part were lavishly distributed to English grantees. (Parl. Hist. v. 1202.) It appears from hence, that at the end of the seventeenth century, the Irish or Anglo-Irish catholics could hardly possess above one sixth or one seventh of the kingdom. They were still formidable from their numbers and their sufferings; and the victorious party saw no security but in a system of oppression, contained in a series of laws during the reigns of William and Anne, which have scarce a parallel in European history, unless it be that of the protestants in France, after the revocation of the edict of Nantes, who yet were but a feeble minority of the whole people. No papist was allowed to keep a school, or to teach any in private houses, except the children of the family. (7 Will. III. c. 4.) Severe penalties were denounced against such as should go themselves or send others for education beyond seas in the Romish religion; and, on probable information given to a magistrate, the burthen of proving the contrary was thrown on the accused; the offence not to be tried by a jury, but by justices at quarter sessions. (Id.) Intermarriages between persons of different religion, and possessing any estate in Ireland, were forbidden; the children in case of either parent being protestant, might be taken from the other, to be educated in that faith. (9 Will. III. c. 3. 2 Anne, c. 6.) No papist could be guardian to any child; but the court of chancery might appoint some relation or other person to bring up the ward in the protestant religion. (9 Will. III. c. 3. 2 Anne, c. 6.) The eldest son, being a protestant, might turn his father's estate in fee simple into a tenancy for life, and thus secure his own inheritance. But if the children were all papists, the father's lands were to be of the nature of gavelkind, and descend equally among them. Papists were disabled from purchasing lands, except for terms of not more than thirty-one years, at a rent not less than two thirds of the full value. They were even to conform within six months after any title should accrue by descent, devise, or settlement, on pain of forfeiture to the next protestant heir; a provision which seems intended to exclude them from real property altogether, and to render the others almost supererogatory. (Id.) Arms, says the poet, remain to the plundered; but the Irish legislature knew that the plunder would be imperfect and insecure while arms remained; no papist was permitted to retain them, and search might be made at any time by two justices. (7 W. III. c. 5.) The bare celebration of catholic rites was not subjected to any fresh penalties; but regular priests, bishops, and others claiming jurisdiction, and all who should come into the kingdom from foreign parts, were banished on pain of transportation, in case of neglecting to comply, and of high treason in case of returning from banishment. Lest these provisions should be evaded, priests were required to be registered; they were forbidden to leave their own parishes; and rewards were held out to informers who should detect the violations of these statutes, to be levied on the popish inhabitants of the country.[1] To have exterminated the catholics by the sword, or expelled them,

[1] 9 W. III. c. 1. 2 Anne, c. 3. s. 7. 8 Anne, c. 3.

like the Moriscoes of Spain, would have been little more repugnant to justice and humanity, but incomparably more politic.

It may easily be supposed, that no political privileges would be left to those who were thus debarred of the common rights of civil society. The Irish parliament had never adopted the act passed in the 5th of Elizabeth, imposing the oath of supremacy on the members of the commons. It had been full of catholics under the queen and her two next successors. In the second session of 1641, after the flames of rebellion had enveloped almost all the island, the house of commons were induted to exclude, by a resolution of their own, those who would not take that oath; a step which can only be judged in connexion with the general circumstances of Ireland at that awful crisis.[1] In the parliament of 1661, no catholic, or only one, was returned;[2] but the house addressed the lords justices to issue a commission for administering the oath of supremacy to all its members. A bill passed the commons in 1663, for imposing that oath in future, which was stopped by a prorogation; and the duke of Ormond seems to have been adverse to it. (Mountmorres, i. 158.) An act of the English parliament after the revolution, reciting that "great disquiet and many dangerous attempts have been made to deprive their majesties and their royal predecessors of the said realm of Ireland by the liberty which the popish recusants there have had and taken to sit and vote in parliament," requires every member of both houses of parliament to take the new oaths of allegiance and supremacy, and to subscribe the declaration against transubstantiation before taking his seat. (Ibid. 3 W. & M. c. 2.) This statute was adopted and enacted by the Irish parliament in 1782, after they had renounced the legislative supremacy of England under which it had been enforced. The elective franchise, which had been rather singularly spared in an act of Anne, was taken away from the Roman catholics of Ireland in 1715; or, as some think, not absolutely till 1727.[3]

These tremendous statutes had in some measure the effects which their framers designed. The wealthier families, against whom they were principally levelled, conformed in many instances to the protestant church.[4] The catholics were extinguished as a political body; and, though any willing allegiance to the house of Hanover would have been monstrous, and it is known that their bishops were constantly nominated to the pope by the Stuart princes,[5] they did not manifest at

[1] Carte's Ormond, i. 328. Warner, 212. These writers censure the measure as illegal and impolitic.

[2] Leland says none; but by Lord Orrery's Letters, i. 35., it appears that one papist and one anabaptist were chosen for that parliament, both from Tuam.

[3] Mountmorres, i. 163. Plowden's Hist. Review of Ireland, i. 263. The terrible act of the second of Anne prescribes only the oaths of allegiance and abjuration for voters at elections, § 24.

[4] Such conversions were naturally distrusted. Boulter expresses alarm at the number of pseudo-protestants who practised the law; and a bill was actually passed to disable any one, who had not professed that religion for five years, from acting as a barrister or solicitor. Letters, i. 226. "The practice of the law, from the top to the bottom, is almost wholly in the hands of these converts."

[5] Evidence of State of Ireland in Sessions of 1824 and 1825, p. 325. (as printed for Murray). In a letter of the year 1775, from a clergyman in Ireland to archbishop Herring, in the British Museum (Sloane MSS. 4164. 11.), this is also stated. The writer seems to object to a repeal of the penal laws, which the catholics were supposed to be attempting; and says they had the exercise of their religion as openly as the protestants, and monasteries in many places.

any period, or even during the rebellions of 1715 and 1745, the least movement towards a disturbance of the government. Yet for thirty years after the accession of George I. they continued to be insulted in public proceedings under the name of the common enemy, sometimes oppressed by the enactment of new statutes, or the stricter execution of the old; till in the latter years of George II. their peaceable deportment, and the rise of a more generous spirit among the Irish protestants, not only sheathed the fangs of the law, but elicited expressions of esteem from the ruling powers, which they might justly consider as the pledge of a more tolerant policy. The mere exercise of their religion in an obscure manner had long been permitted without molestation.[1]

Thus in Ireland there were three nations, the original natives, the Anglo-Irish, and the new English; the two former catholic, except some, chiefly of the upper classes, who had conformed to the church; the last wholly protestant. There were three religions, the Roman catholic, the established or Anglican, and the presbyterian: more than one half of the protestants, according to the computation of those times, belonging to the latter denomination.[2] These, however, in a less degree were under the ban of the law as truly as the catholics themselves; they were excluded from all civil and military offices by a test act, and even their religious meetings were denounced by penal statutes. Yet the house of commons after the revolution always contained a strong presbyterian body, and unable, as it seems, to obtain an act of indemnity for those who had taken commissions in the militia, while the rebellion of 1715 was raging in Great Britain, had recourse to a resolution, that whoever should prosecute any dissenter for accepting such a commission is an enemy to the king and the protestant interest. (Plowden, 243.) They did not even obtain a legal toleration till 1720. (Irish Stat. 6 G. I. c. 5.) It seems as if the connexion of the two islands, and the whole system of constitutional laws in the lesser, subsisted only for the sake of securing the privileges and emoluments of a small number of ecclesiastics, frequently strangers, who performed no duties, and rendered no sort of return for their enormous monopoly. A great share, in fact, of the temporal government under George II. was thrown successively into the hands of two primates, Boulter and Stone; the one a worthy but narrow-minded man, who showed his egregious ignorance of policy in endeavouring to promote the wealth and happiness of the people, whom he at the same time studied to depress and discourage in respect of political freedom; the other an able, but profligate and ambitious statesman, whose name is mingled, as an object of odium and enmity, with the first struggles of Irish patriotism.

The new Irish nation, or rather the protestant nation, since all distinctions of origin have, from the time of the great rebellion, been merged in those of religion, partook in large measure of the spirit that was poured out on the advocates of liberty and the revolution in the

[1] Plowden's Hist. Review of State of Ireland, vol. i. passim.

[2] Sir William Petty, in 1672, reckons the inhabitants of Ireland at 1,100,000: of whom 200,000 English, and 100,000 Scots; above half the former being of the established church. Political Anatomy of Ireland, chap. ii. It is sometimes said in modern times, though I believe erroneously, that the presbyterians form a majority of protestants in Ireland: yet their proportion has probably diminished since the beginning of the eighteenth century.

sister kingdom. Their parliament was always strongly whig, and scarcely manageable during the later years of the queen. They began to assimilate themselves more and more to the English model, and to cast off by degrees the fetters that galled and degraded them. By Poyning's celebrated law, the initiative power was reserved to the English council. This act, at one time popular in Ireland, was afterwards justly regarded as destructive of the rights of their parliament, and a badge of the nation's dependence. It was attempted by the commons in 1641, and by the catholic confederates in the rebellion, to procure its repeal; which Charles I. steadily refused, till he was driven to refuse nothing. In his son's reign, it is said that "the council framed bills altogether; a negative alone on them and their several provisoes was left to parliament; only a general proposition for a bill by way of address to the lord lieutenant and council came from parliament; nor was it till after the revolution that heads of bills were presented; these last in fact resembled acts of parliament or bills, with only the small difference of 'We pray that it may be enacted,' instead of 'Be it enacted.'"[1] They assumed about the same time the examination of accounts, and of the expenditure of public money. (Mountmorres, 184.)

Meanwhile, as they gradually emancipated themselves from the ascendency of the crown, they found a more formidable power to contend with in the English parliament. It was acknowledged, by all at least of the protestant name, that the crown of Ireland was essentially dependent on that of England, and subject to any changes that might affect the succession of the latter. But the question as to the subordination of her legislature was of a different kind. The precedents and authorities of early ages seem not decisive; so far as they extend, they rather countenance the opinion that English statutes were of themselves valid in Ireland. But from the time of Henry VI. or Edward IV. it was certainly established that they had no operation, unless enacted by the Irish parliament. This however would not legally prove that they might not be binding, if express words to that effect were employed; and such was the doctrine of lord Coke and of other English lawyers. This came into discussion about the eventful period of 1641. The Irish in general protested against the legislative authority of England, as a novel theory which could not be maintained (Carte's Ormond, iii. 55.); and two treatises on the subject, one ascribed to lord chancellor Bolton, or more probably to an eminent lawyer, Patrick Darcy, for the independence of Ireland, another, in answer to it by serjeant Mayart, may be read in the Hibernica of Harris. (Vol. ii. Mountmorres, i. 360.) Very few instances occurred before the revolution, wherein the English parliament thought fit to include Ireland in its enactments, and none perhaps wherein they were carried into effect. But after the revolution several laws of great importance were passed in England to bind the other kingdom, and acquiesced in without express opposition by its parliament. Molyneux, however, in his celebrated "Case of Ireland's being bound by Acts of Parliament in England stated," published in 1697, set up the claim of his country for ab-

[1] Mountmorres. ii. 147. As one house could not regularly transmit heads of bills to the other, the advantage of a joint recommendation was obtained by means of conferences, which were consequently much more usual than in England. Id. 179.

solute legislative independency. The house of commons at Westminster came to resolutions against this book; and, with the high notions of parliamentary sovereignty, were not likely to desist from a pretension which, like the very similar claim to impose taxes in America, sprung in fact from the semi-republican scheme of constitutional law established by means of the revolution.[1] It is evident that while the sovereignty and enacting power was supposed to reside wholly in the king, and only the power of consent in the two houses of parliament, it was much less natural to suppose a control of the English legislature over other dominions of the crown, having their own representation for similar purposes, than after they had become, in effect and in general sentiment, though not quite in the statute-book, co-ordinate partakers of the supreme authority. The Irish parliament however, advancing as it were in a parallel line, had naturally imbibed the same sense of its own supremacy, and made at length an effort to assert it. A judgment from the court of Exchequer, in 1719, having been reversed by the house of lords, an appeal was brought before the lords in England, who affirmed the judgment of the exchequer. The Irish lords resolved that no appeal lay from the court of exchequer in Ireland to the king in parliament in Great Britain; and the barons of that court having acted in obedience to the order of the English lords, were taken into the custody of the black rod. That house next addressed the king, setting forth their reasons against admitting the appellant jurisdiction. But the lords in England, after requesting the king to confer some favour on the barons of the exchequer who had been censured and illegally imprisoned for doing their duty, ordered a bill to be brought in for better securing the dependency of Ireland upon the crown of Great Britain, which declares "that the king's majesty, by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain in parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the house of lords of Ireland have not nor of right ought to have any jurisdiction to judge of, reverse, or affirm any judgment, sentence or decree given or made in any court within the said kingdom; and that all proceedings before the said house of lords upon any such judgment, sentence or decree, are and are hereby declared to be, utterly null and void to all intents and purposes whatsoever."[2]

The English government found no better method of counteracting this rising spirit of independence than by bestowing the chief posts in the state and church on strangers, in order to keep up what was called the English interest.[3] This wretched policy united the natives of Ire-

[1] Journs., 27 June, 1698. Parl. Hist. v. 1181. They resolved at the same time that the conduct of the Irish parliament, in pretending to re-enact a law made in England expressly to bind Ireland, had given occasion to these dangerous positions. On June 30, they addressed the king in consequence, requesting him to prevent any thing of the like kind in future. In this address, as first drawn, the legislative authority of the *kingdom of England* is asserted. But this phrase was omitted afterwards, I presume, as rather novel; though by doing so they destroyed the basis of their proposition, which could stand much better on the new theory of the constitution than the ancient.

[2] 5 G. I. c. 5. Plowden, 244. The Irish house of lords had, however, entertained writs of error as early as 1644, and appeals in equity from 1661. Mountmorres, i. 339. The English peers might have remembered that their own precedents were not much older.

[3] See Boulter's Letters, passim. His plan for governing Ireland was to send over as many

land in jealousy and discontent, which the latter years of Swift were devoted to inflame. It was impossible that the kingdom should become, as it did under George II., more flourishing through its great natural fertility, its extensive manufacture of linen, and its facilities for commerce, though much restricted, the domestic alarm from the papists also being allayed by their utter prostration, without writhing under the indignity of its subordination; or that a house of commons, constructed so much on the model of the English, could hear patiently of liberties and privileges it did not enjoy. These aspirations for equality first, perhaps, broke out into audible complaints in the year 1753. The country was in so thriving a state that there was a surplus revenue after payment of all charges. The house of commons determined to apply this to the liquidation of a debt. The government, though not unwilling to admit of such an application, maintained that the whole revenue belonged to the king, and could not be disposed of without his previous consent. In England, where the grants of parliament are appropriated according to estimates, such a question could hardly arise; nor would there, I presume, be the slightest doubt as to the control of the house of commons over a surplus income. But in Ireland, the practice of appropriation seems never to have prevailed, at least so strictly (Mountmorres, i. 424.); and the constitutional right might perhaps not unreasonably be disputed. After long and violent discussions, wherein the speaker of the commons and other eminent men bore a leading part on the popular side, the crown was so far victorious as to procure some motions to be carried, which seemed to imply its authority; but the house took care, by more special applications of the revenue, to prevent the recurrence of an undisposed surplus.[1] From this era the great parliamentary history of Ireland begins, and is terminated after half a century by the Union: a period fruitful of splendid eloquence, and of ardent, though not always uncompromising patriotism; but which, of course, is beyond the limits prescribed to these pages.

English-born bishops as possible. "The bishops," he says, "are the persons on whom the government must depend for doing the public business here." I. 238. This of course disgusted the Irish church.

[1] Plowden, 306. et post. Hardy's Life of Lord Charlemont.

LORD MACAULAY

ON

HALLAM'S

CONSTITUTIONAL HISTORY OF ENGLAND.

[EDINBURGH REVIEW, SEPT., 1828.]

The Constitutional History of England, from the accession of Hen. VII. to the death of Geo. II.—HENRY HALLAM. 2 vols. 4to. 1827.

HISTORY, at least in its state of imaginary perfection, is a compound of poetry and philosophy. It impresses general truths on the mind by a vivid representation of particular characters and incidents. But, in fact, the two hostile elements of which it consists have never been known to form a perfect amalgamation; and at length, in our own time, they have been completely and professedly separated. Good histories, in the proper sense of the word, we have not. But we have good historical romances and good historical essays. The imagination and the reason, if we may use a legal metaphor, have made partition of a province of literature of which they were formerly seised *per my et per tout;* and now they hold their respective portions in severalty, instead of holding the whole in common.

To make the past present, to bring the distant near, to place us in the society of a great man, or on the eminence which overlooks the field of a mighty battle, to invest with the reality of human flesh and blood beings whom we are too much inclined to consider as personified qualities in an allegory, to call up our ancestors before us with all their peculiarities of language, manners, and garb, to show us over their houses, to seat us at their tables, to rummage their old-fashioned wardrobes, to explain the uses of their ponderous furniture, these parts of the duty which properly belongs to the historian have been appropriated by the historical novelist. On the other hand, to extract the philosophy of history, to direct our judgment of events and men, to trace the connection of causes and effects, and to draw from the occurrences of former times general lessons of moral and political wisdom, has become the business of a distinct class of writers.

Of the two kinds of composition into which history has been thus divided, the one may be compared to a map, the other to a painted landscape. The picture, though it places the country before us, does not enable us to ascertain with accuracy the form and dimensions of its component parts, the distances, and the angles. The map is not a work of imitative art. It presents no scene to the imagination; but it gives us exact information as to the bearings of the various points, and is a more useful companion to the traveller or the general, than the painting could be, though it were the grandest that ever Rosa

peopled with outlaws, or the sweetest over which Claude ever poured the mellow effulgence of a setting sun.

It is remarkable that the practice of separating the two ingredients of which history is composed, has become prevalent on the Continent as well as in this country. Italy has already produced a historical novel, of high merit and of still higher promise. In France, the practice has been carried to a length somewhat whimsical. M. Sismondi publishes a grave and stately history, very valuable and a little tedious. He then sends forth as a companion to it a novel, in which he attempts to give a lively representation of characters and manners. This course, as it seems to us, has all the disadvantages of a division of labour, and none of its advantages. We understand the expediency of keeping the functions of cook and coachman distinct. The dinner will be better dressed, and the horses better managed. But where the two situations are united, as in the Maître Jacques of Molière, we do not see that the matter is much mended by the solemn form with which the pluralist passes from one of his employments to the other.

We manage these things better in England. Sir Walter Scott gives us a novel; Mr. Hallam a critical and argumentative history. Both are occupied with the same matter. But the former looks at it with the eye of a sculptor. His intention is to give an express and lively image of its external form. The latter is an anatomist. His task is to dissect the subject to its inmost recesses, and to lay bare before us all the springs of motion and all the causes of decay.

Mr. Hallam is, on the whole, far better qualified than any other writer of our time for the office which he has undertaken. He has great industry and great acuteness. His knowledge is extensive, various, and profound. His mind is equally distinguished by the amplitude of its grasp, and by the delicacy of its tact. His speculations have none of that vagueness which is the common fault of political philosophy. On the contrary, they are strikingly practical, and teach us not only the general rule, but the mode of applying it to solve particular cases. In this respect they often remind us of the Discourses of Machiavelli.

The style is sometimes harsh, and sometimes obscure. We have also here and there remarked a little of that unpleasant trick, which Gibbon brought into fashion, the trick, we mean, of narrating by implication and allusion. Mr. Hallam, however, has an excuse which Gibbon had not. His work is designed for readers who are already acquainted with the ordinary books on English history, and who can therefore unriddle these little enigmas without difficulty. The manner of the book is, on the whole, not unworthy of the matter. The language, even where most faulty, is weighty and massive, and indicates strong sense in every line. It often rises to an eloquence, not florid or impassioned, but high, grave, and sober; such as would become a state paper, or a judgment delivered by a great magistrate, a Somers or a D'Aguesseau.

In this respect the character of Mr. Hallam's mind corresponds strikingly with that of his style. His work is eminently judicial. Its whole spirit is that of the bench, not that of the bar. He sums

up with a calm, steady impartiality, turning neither to the right nor to the left, glossing over nothing, exaggerating nothing, while the advocates on both sides are alternately biting their lips to hear their conflicting mis-statements and sophisms exposed. On a general survey, we do not scruple to pronounce the Constitutional History the most impartial book that we ever read. We think it the more incumbent on us to bear this testimony strongly at first setting out, because, in the course of our remarks, we shall think it right to dwell principally on those parts of it from which we dissent.

There is one peculiarity about Mr. Hallam which, while it adds to the value of his writings, will, we fear, take away something from their popularity. He is less of a worshipper than any historian whom we can call to mind. Every political sect has its esoteric and its exoteric school, its abstract doctrines for the initiated, its visible symbols, its imposing forms, its mythological fables for the vulgar. It assists the devotion of those who are unable to raise themselves to the contemplation of pure truths by all the devices of Pagan or Papal superstition. It has its altars and its deified heroes, its relics and pilgrimages, its canonized martyrs and confessors, its festivals and its legendary miracles. Our pious ancestors, we are told, deserted the High Altar of Canterbury, to lay all their obligations on the shrine of St. Thomas. In the same manner the great and comfortable doctrines of the Tory creed, those particularly which relate to restrictions on worship and on trade, are adored by squires and rectors in Pitt Clubs, under the name of a minister who was as bad a representative of the system which has been christened after him as Becket of the spirit of the Gospel. And, on the other hand, the cause for which Hampden bled on the field, and Sydney on the scaffold, is enthusiastically toasted by many an honest Radical, who would be puzzled to explain the difference between ship-money and the Habeas Corpus Act. It may be added that, as in religion, so in politics, few even of those who are enlightened enough to comprehend the meaning latent under the emblems of their faith can resist the contagion of the popular superstition. Often, when they flatter themselves that they are merely feigning a compliance with the prejudices of the vulgar, they are themselves under the influence of those very prejudices. It probably was not altogether on grounds of expediency that Socrates taught his followers to honour the gods whom the state honoured, and bequeathed a cock to Esculapius with his dying breath. So there is often a portion of willing credulity and enthusiasm in the veneration which the most discerning men pay to their political idols. From the very nature of man it must be so. The faculty by which we inseparably associate ideas which have often been presented to us in conjunction, is not under the absolute control of the will. It may be quickened into morbid activity. It may be reasoned into sluggishness. But in a certain degree it will always exist. The almost absolute mastery which Mr. Hallam has obtained over feelings of this class is perfectly astonishing to us, and will, we believe, be not only astonishing but offensive to many of his readers. It must particularly disgust those readers who, in their speculations on politics, are not reasoners but fanciers; whose opinions, even

when sincere, are not produced according to the ordinary law of intellectual births, by induction or inference, but are equivocally generated by the heat of fervid tempers out of the overflowing of tumid imaginations. A man of this class is always in extremes. He cannot be a friend to liberty without calling for a community of goods, or a friend to order without taking under his protection the foulest excesses of tyranny. His admiration oscillates between the most worthless of rebels and the most worthless of oppressors, between Marten, the scandal of the High Court of Justice, and Laud, the scandal of the Star Chamber. He can forgive anything but temperance and impartiality. He has a certain sympathy with the violence of his opponents, as well as with that of his associates. In every furious partisan he sees either his present self or his former self, the pensioner that is or the Jacobin that has been. But he is unable to comprehend a writer who, steadily attached to principles, is indifferent about names and badges, and who judges of characters with equable severity, not altogether untinctured with cynicism, but free from the slightest touch of passion, party spirit, or caprice.

We should probably like Mr. Hallam's book more if, instead of pointing out with strict fidelity the bright points and the dark spots of both parties, he had exerted himself to whitewash the one and to blacken the other. But we should certainly prize it far less. Eulogy and invective may be had for the asking. But for cold rigid justice, the one weight and the one measure, we know not where else we can look.

No portion of our annals has been more perplexed and misrepresented by writers of different parties than the history of the Reformation. In this labyrinth of falsehood and sophistry, the guidance of Mr. Hallam is peculiarly valuable. It is impossible not to admire the even-handed justice with which he deals out castigation to right and left on the rival persecutors.

It is vehemently maintained by some writers of the present day, that the government of Elizabeth persecuted neither Papists nor Puritans as such, and occasionally that the severe measures which it adopted were dictated, not by religious intolerance, but by political necessity. Even the excellent account of those times which Mr. Hallam has given, has not altogether imposed silence on the authors of this fallacy. The title of the Queen, they say, was annulled by the Pope; her throne was given to another; her subjects were incited to rebellion; her life was menaced; every Catholic was bound in conscience to be a traitor; it was therefore against traitors, not against Catholics, that the penal laws were enacted.

That our readers may be the better able to appreciate the merits of this defence, we will state, as concisely as possible, the substance of some of these laws.

As soon as Elizabeth ascended the throne, and before the least hostility to her government had been shown by the Catholic population, an act passed prohibiting the celebration of the rites of the Romish Church, on pain of forfeiture for the first offence, a year's imprisonment for the second, and perpetual imprisonment for the third.

A law was next made in 1562, enacting, that all who had ever gra-

duated at the Universities or received holy orders, all lawyers, and all magistrates, should take the oath of supremacy when tendered to them, on pain of forfeiture and imprisonment during the royal pleasure. After the lapse of three months, it might again be tendered to them; and, if it were again refused, the recusant was guilty of high treason. A prospective law, however severe, framed to exclude Catholics from the liberal professions, would have been mercy itself compared with this odious act. It is a retrospective statute; it is a retrospective penal statute; it is a retrospective penal statute against a large class. We will not positively affirm that a law of this description must always, and under all circumstances, be unjustifiable. But the presumption against it is most violent; nor do we remember any crisis, either in our own history, or in the history of any other country, which would have rendered such a provision necessary. But in the present, what circumstances called for extraordinary rigour? There might be disaffection among the Catholics. The prohibition of their worship would naturally produce it. But it is from their situation, not from their conduct, from the wrongs which they had suffered, not from those which they had committed, that the existence of discontent among them must be inferred. There were libels, no doubt, and prophecies, and rumours, and suspicions, strange grounds for a law inflicting capital penalties, *ex post facto*, on a large body of men.

Eight years later, the bull of Pius deposing Elizabeth produced a third law. This law, to which alone, as we conceive, the defence now under our consideration can apply, provides that, if any Catholic shall convert a Protestant to the Romish Church, they shall both suffer death as for high treason.

We believe that we might safely content ourselves with stating the fact, and leaving it to the judgment of every plain Englishman. Recent controversies have, however, given so much importance to this subject, that we will offer a few remarks on it.

In the first place, the arguments which are urged in favour of Elizabeth, apply with much greater force to the case of her sister Mary. The Catholics did not, at the time of Elizabeth's accession, rise in arms to seat a Pretender on her throne. But before Mary had given, or could give, provocation, the most distinguished Protestants attempted to set aside her rights in favour of the Lady Jane. That attempt, and the subsequent insurrection of Wyatt, furnished at least as good a plea for the burning of Protestants, as the conspiracies against Elizabeth furnish for hanging and embowelling the Papists.

The fact is, that both pleas are worthless alike. If such arguments are to pass current, it will be easy to prove that there was never such a thing as religious persecution since the creation. For there never was a religious persecution in which some odious crime was not, justly or unjustly, said to be obviously deducible from the doctrines of the persecuted party. We might say that the Cæsars did not persecute the Christians; that they only punished men who were charged, rightly or wrongly, with burning Rome, and with committing the foulest abominations in their assemblies; and that the refusal to throw frankincense on the altar of Jupiter was not the crime, but only evidence of the crime. We might say, that the massacre of St. Bar-

tholomew was intended to extirpate, not a religious sect, but a political party. For, beyond all doubt, the proceedings of the Huguenots, from the conspiracy of Amboise to the battle of Moncontour, had given much more trouble to the French monarchy than the Catholics had ever given to the English monarchy since the Reformation; and that, too, with much less excuse.

The true distinction is perfectly obvious. To punish a man because he has committed a crime, or is believed, though unjustly, to have committed a crime, is not persecution. To punish a man, because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrines with him, that he will commit a crime, is persecution, and is, in every case, foolish and wicked.

When Elizabeth put Ballard and Babington to death, she was not persecuting. Nor should we have accused her government of persecution for passing any law, however severe, against overt acts of sedition. But to argue that, because a man is a Catholic, he must think it right to murder a heretical sovereign, and that because he thinks it right he will attempt to do it, and then, to found on this conclusion a law for punishing him as if he had done it, is plain persecution.

If, indeed, all men reasoned in the same manner on the same data, and always did what they thought it their duty to do, this mode of dispensing punishment might be extremely judicious. But as people who agree about premises often disagree about conclusions, and as no man in the world acts up to his own standard of right, there are two enormous gaps in the logic by which alone penalties for opinions can be defended. The doctrine of reprobation, in the judgment of many very able men, follows by syllogistic necessity from the doctrine of election. Others conceive that the Antinomian and Manichean heresies directly follow from the doctrine of reprobation; and it is very generally thought that licentiousness and cruelty of the worst description are likely to be the fruits, as they often have been the fruits, of Antinomian and Manichean opinions. This chain of reasoning, we think, is as perfect in all its parts as that which makes out a Papist to be necessarily a traitor. Yet it would be rather a strong measure to hang all the Calvinists, on the ground that, if they were spared, they would infallibly commit all the atrocities of Matthias and Knipperdoling. For, reason the matter as we may, experience shows us that a man may believe in election without believing in reprobation, that he may believe in reprobation without being an Antinomian, and that he may be an Antinomian without being a bad citizen. Man, in short, is so inconsistent a creature that it is impossible to reason from his belief to his conduct, or from one part of his belief to another.

We do not believe that every Englishman who was reconciled to the Catholic Church would, as a necessary consequence, have thought himself justified in deposing or assassinating Elizabeth. It is not sufficient to say that the convert must have acknowledged the authority of the Pope, and that the Pope had issued a bull against the Queen. We know through what strange loopholes the human mind contrives to escape, when it wishes to avoid a disagreeable inference from an admitted proposition. We know how long the Jansenists con-

trived to believe the Pope infallible in matters of doctrine, and at the same time to believe doctrines which he pronounced to be heretical. Let it pass, however, that every Catholic in the kingdom thought that Elizabeth might be lawfully murdered. Still the old maxim, that what is the business of everybody is the business of nobody, is particularly likely to hold good in a case in which a cruel death is the almost inevitable consequence of making any attempt.

Of the ten thousand clergyman of the Church of England, there is scarcely one who would not say that a man who should leave his country and friends to preach the Gospel among savages, and who should, after labouring indefatigably without any hope of reward, terminate his life by martyrdom, would deserve the warmest admiration. Yet we doubt whether ten of the ten thousand ever thought of going on such an expedition. Why should we suppose that conscientious motives, feeble as they are constantly found to be in a good cause, should be omnipotent for evil? Doubtless there was many a jolly Popish priest in the old manor-houses of the northern counties, who would have admitted, in theory, the deposing power of the Pope, but who would not have been ambitious to be stretched on the rack, even though it were to be used, according to the benevolent proviso of Lord Burleigh, "as charitably as such a thing can be," or to be hanged, drawn, and quartered, even though, by that rare indulgence which the Queen, of her special grace, certain knowledge, and mere motion, sometimes extended to very mitigated cases, he were allowed a fair time to choke before the hangman began to grabble in his entrails.

But the laws passed against the Puritans had not even the wretched excuse which we have been considering. In this case, the cruelty was equal, the danger infinitely less. In fact, the danger was created solely by the cruelty. But it is superfluous to press the argument. By no artifice of ingenuity can the stigma of persecution, the worst blemish of the English Church, be effaced or patched over. Her doctrines, we well know, do not tend to intolerance. She admits the possibility of salvation out of her own pale. But this circumstance, in itself honourable to her, aggravates the sin and the shame of those who persecuted in her name. Dominic and De Montfort did not, at least, murder and torture for differences of opinion which they considered as trifling. It was to stop an infection which, as they believed, hurried to perdition every soul which it seized, that they employed their fire and steel. The measures of the English government with respect to the Papists and Puritans sprang from a widely different principle. If those who deny that the supporters of the Established Church were guilty of religious persecution, mean only that they were not influenced by religious motive, we perfectly agree with them. Neither the penal code of Elizabeth, nor the more hateful system by which Charles II. attempted to force Episcopacy on the Scotch, had an origin so noble. The cause is to be sought in some circumstances which attended the Reformation in England, circumstances of which the effects long continued to be felt, and may in some degree be traced even at the present day.

In Germany, in France, in Switzerland, and in Scotland, the contest against the Papal power was essentially a religious contest. In all those countries, indeed, the cause of the Reformation, like every other

great cause, attracted to itself many supporters influenced by no conscientious principle, many who quitted the Established Church only because they thought her in danger, many who were weary of her restraints, and many who were greedy for her spoils. But it was not by these adherents that the separation was there conducted. They were welcome auxiliaries; their support was too often purchased by unworthy compliances; but, however exalted in rank or power, they were not the leaders in the enterprise. Men of a widely different description, men who redeemed great infirmities and errors by sincerity, disinterestedness, energy, and courage, men who, with many of the vices of revolutionary chiefs and of polemic divines, united some of the highest qualities of apostles, were the real directors. They might be violent in innovation and scurrilous in controversy. They might sometimes act with inexcusable severity towards opponents, and sometimes connive disreputably at the vices of powerful allies. But fear was not in them, nor hypocrisy, nor avarice, nor any petty selfishness. Their one great object was the demolition of the idols, and the purification of the sanctuary. If they were too indulgent to the failings of eminent men from whose patronage they expected advantage to the church, they never flinched before persecuting tyrants and hostile armies. If they set the lives of others at nought in comparison of their doctrines, they were equally ready to throw away their own. Such were the authors of the great schism on the Continent and in the northern part of this island. The Elector of Saxony and the Landgrave of Hesse, the Prince of Condé and the King of Navarre, of Moray, and Morton, might espouse the Protestant opinions, or might pretend to espouse them; but it was from Luther, from Calvin, from Knox, that the Reformation took its character.

England has no such names to show; not that she wanted men of sincere piety, of deep learning, of steady and adventurous courage. But these were thrown into the background. Elsewhere men of this character were the principals. Here they acted a secondary part. Elsewhere worldliness was the tool of zeal. Here zeal was the tool of worldliness. A King, whose character may be best described by saying that he was despotism itself personified, unprincipled ministers, a rapacious aristocracy, a servile Parliament, such were the instruments by which England was delivered from the yoke of Rome. The work which had been begun by Henry, the murderer of his wives, was continued by Somerset, the murderer of his brother, and completed by Elizabeth, the murderer of her guest. Sprung from brutal passion, nurtured by selfish policy, the Reformation in England displayed little of what had, in other countries, distinguished it, unflinching and unsparing devotion, boldness of speech, and singleness of eye. These were indeed to be found; but it was in the lower ranks of the party which opposed the authority of Rome, in such men as Hooper, Latimer, Rogers, and Taylor. Of those who had any important share in bringing the Reformation about, the excellent Ridley was perhaps the only person who did not consider it as a mere political job. Even Ridley did not play a very prominent part. Among the statesmen and prelates who principally gave the tone to the religious changes, there is one, and one only, whose conduct partiality itself can attribute to

any other than interested motives. It is not strange, therefore, that his character should have been the subject of fierce controversy. We need not say that we speak of Cranmer.

Mr. Hallam has been severely censured for saying, with his usual placid severity, that, "if we weigh the character of this prelate in an equal balance, he will appear far indeed removed from the turpitude imputed to him by his enemies; yet not entitled to any extraordinary veneration." We will venture to expand the sense of Mr. Hallam, and to comment on it thus:—If we consider Cranmer merely as a statesman, he will not appear a much worse man than Wolsey, Gardiner, Cromwell, or Somerset. But, when an attempt is made to set him up as a saint, it is scarcely possible for any man of sense who knows the history of the times well, to preserve his gravity. If the memory of the archbishop had been left to find its own place, he would have soon been lost among the crowd which is mingled

> "A quel cattivo coro
> Degli angeli, che non furon ribelli,
> Nè fur fedeli a Dio, ma per se foro."

And the only notice which it would have been necessary to take of his name would have been

> "Non ragionam di lui; ma guarda, e passa."

But when his admirers challenge for him a place in the noble army of martyrs, his claims require fuller discussion.

The shameful origin of his history, common enough in the scandalous chronicles of courts, seems strangely out of place in a hagiology. Cranmer rose into favour by serving Henry in the disgraceful affair of his first divorce. He promoted the marriage of Anne Boleyn with the King. On a frivolous pretence he pronounced it null and void. On a pretence, if possible, still more frivolous, he dissolved the ties which bound the shameless tyrant to Anne of Cleves. He attached himself to Cromwell while the fortunes of Cromwell flourished. He voted for cutting off Cromwell's head without a trial, when the tide of royal favour turned. He conformed backwards and forwards as the King changed his mind. While Henry lived he assisted in condemning to the flames those who denied the doctrine of transubstantiation. When Henry died, he found out that the doctrine was false. He was, however, not at a loss for people to burn. The authority of his station and of his grey hairs was employed to overcome the disgust with which an intelligent and virtuous child regarded persecution.

Intolerance is always bad. But the sanguinary intolerance of a man who thus wavered in his creed excites a loathing, to which it is difficult to give vent without calling foul names. Equally false to political and to religious obligations, he was first the tool of Somerset, and then the tool of Northumberland. When the former wished to put his own brother to death without even the semblance of a trial, he found a ready instrument in Cranmer. In spite of the canon law, which forbade a churchman to take any part in matters of blood, the archbishop signed the warrant for the atrocious sentence. When Somerset had

been in his turn destroyed, his destroyer received the support of Cranmer in his attempt to change the course of the succession.

The apology made for him by his admirers only renders his conduct more contemptible. He complied, it is said, against his better judgment, because he could not resist the entreaties of Edward. A holy prelate of sixty, one would think, might be better employed by the bedside of a dying child, than in committing crimes at the request of the young disciple. If he had shown half as much firmness when Edward requested him to commit treason, as he had before shown when Edward requested him not to commit murder, he might have saved the country from one of the greatest misfortunes that it ever underwent. He became, from whatever motive, the accomplice of the worthless Dudley. The virtuous scruples of another young and amiable mind were to be overcome. As Edward had been forced into persecution, Jane was to be seduced into treason. No transaction in our annals is more unjustifiable than this. If a hereditary title were to be respected, Mary possessed it. If a parliamentary title were preferable, Mary possessed that also. If the interest of the Protestant religion required a departure from the ordinary rule of succession, that interest would have been best served by raising Elizabeth to the throne. If the foreign relations of the kingdom were considered, still stronger reasons might be found for preferring Elizabeth to Jane. There was great doubt whether Jane or the Queen of Scotland had the better claim; and that doubt would, in all probability, have produced a war both with Scotland and with France, if the project of Northumberland had not been blasted in its infancy. That Queen Elizabeth had a better claim than the Queen of Scotland was indisputable. To the part which Cranmer, and unfortunately some better men than Cranmer, took in this most reprehensible scheme, much of the severity with which the Protestants were afterwards treated must in fairness be ascribed.

The plot failed; Popery triumphed; and Cranmer recanted. Most people look on this recantation as a single blemish on an honourable life, the frailty of an unguarded moment. But, in fact, it was in strict accordance with the system on which he had constantly acted. It was part of a regular habit. It was not the first recantation that he had made; and, in all probability, if it had answered its purpose, it would not have been the last. We do not blame him for not choosing to be burned alive. It is no very severe reproach to any person that he does not possess heroic fortitude. But surely a man who liked the fire so little, should have had some sympathy for others. A persecutor who inflicts nothing which he is not ready to endure deserves some respect. But when a man who loves his doctrines more than the lives of his neighbours, loves his own little finger better than his doctrines, a very simple argument *à fortiori* will enable us to estimate the amount of his benevolence.

But his martyrdom, it is said, redeemed everything. It is extraordinary that so much ignorance should exist on this subject. The fact is, that if a martyr be a man who chooses to die rather than to renounce his opinions, Cranmer was no more a martyr than Dr. Dodd. He died solely because he could not help it. He never

retracted his recantation till he found he had made it in vain. The Queen was fully resolved that, Catholic or Protestant, he should burn. Then he spoke out as people generally speak out when they are at the point of death, and have nothing to hope or to fear on earth. If Mary had suffered him to live, we suspect that he would have heard mass and received absolution, like a good Catholic, till the accession of Elizabeth, and that he would then have purchased, by another apostasy, the power of burning men better and braver than himself.

We do not mean, however, to represent him as a monster of wickedness. He was not wantonly cruel or treacherous. He was merely a supple, timid, interested courtier, in times of frequent and violent change. That which has always been represented as his distinguishing virtue, the facility with which he forgave his enemies, belongs to the character. Those of his class are never vindictive, and never grateful. A present interest effaces past services and past injuries from their minds together. Their only object is self-preservation; and for this they conciliate those who wrong them, just as they abandon those who serve them. Before we extol a man for his forgiving temper, we should inquire whether he is above revenge, or is below it.

Somerset, with as little principle as his coadjutor, had a firmer and more commanding mind. Of Henry, an orthodox Catholic, excepting that he chose to be his own Pope, and of Elizabeth, who certainly had no objection to the theology of Rome, we need say nothing. But these four persons were the great authors of the English Reformation. Three of them had a direct interest in the extension of the royal prerogative. The fourth was the ready tool of any who could frighten him. It is not difficult to see from what motives, and on what plan, such persons would be inclined to remodel the Church. The scheme was merely to rob the Babylonian enchantress of her ornaments, to transfer the full cup of sorceries to other hands, spilling as little as possible by the way. The Catholic doctrines and rites were to be retained in the Church of England. But the King was to exercise the control which had formerly belonged to the Roman Pontiff. In this Henry for a time succeeded. The extraordinary force of his character, the fortunate situation in which he stood with respect to foreign powers, and the vast resources which the suppression of the monasteries placed at his disposal, enabled him to oppress both the religious factions equally. He punished with impartial severity those who renounced the doctrines of Rome, and those who acknowledged her jurisdiction. The basis, however, on which he attempted to establish his power was too narrow to be durable. It would have been impossible even for him long to persecute both persuasions. Even under his reign there had been insurrections on the part of the Catholics, and signs of a spirit, which was likely soon to produce insurrection on the part of the Protestants. It was plainly necessary, therefore, that the Government should form an alliance with one or with the other side. To recognise the Papal supremacy, would have been to abandon the whole design. Reluctantly and sullenly it at last joined the Protestants. In forming this junction, the object of the government was to procure as much aid as possible for its selfish

undertaking, and to make the smallest possible concessions to the spirit of religious innovation.

From this compromise the Church of England sprang. In many respects, indeed, it has been well for her that, in an age of exuberant zeal, her principal founders were mere politicians. To this circumstance she owes her moderate articles, her decent ceremonies, her noble and pathetic liturgy. Her worship is not disfigured by mummery. Yet she has preserved, in a far greater degree than any of her Protestant sisters, that art of striking the senses and filling the imagination in which the Catholic Church so eminently excels. But, on the other hand, she continued to be, for more than a hundred and fifty years, the servile handmaid of monarchy, the steady enemy of public liberty. The divine right of kings, and the duty of passively obeying all their commands, were her favourite tenets. She held them firmly through times of oppression, persecution, and licentiousness; while law was trampled down; while judgment was perverted; while the people were eaten as though they were bread. Once, and but once, for a moment, and but for a moment, when her own dignity and property were touched, she forgot to practise the submission which she had taught.

Elizabeth clearly discerned the advantages which were to be derived from a close connection between the monarchy and the priesthood. At the time of her accession, indeed, she evidently meditated a partial reconciliation with Rome; and, throughout her whole life, she leaned strongly to some of the most obnoxious parts of the Catholic system. But her imperious temper, her keen sagacity, and her peculiar situation, soon led her to attach herself completely to a Church which was all her own. On the same principle on which she joined it, she attempted to drive all her people within its pale by persecution. She supported it by severe penal laws, not because she thought conformity to its discipline neccessary to salvation; but because it was the fastness which arbitrary power was making strong for itself; because she expected a more profound obedience from those who saw in her both their civil and their ecclesiastical head, than from those who, like the Papists, ascribe spiritual authority to the Pope, or from those who, like some of the Puritans, ascribed it only to Heaven. To dissent from her establishment was to dissent from an institution founded with an express view to the maintenance and extension of the royal prerogative.

This great Queen and her successors, by considering conformity and loyalty as identical, at length made them so. With respect to the Catholics, indeed, the rigour of persecution abated after her death. James soon found that they were unable to injure him, and that the animosity which the Puritan party felt towards them drove them of necessity to take refuge under his throne. During the subsequent conflict, their fault was anything but disloyalty. On the other hand, James hated the Puritans with more than the hatred of Elizabeth. Her aversion to them was political; his was personal. The sect had plagued him in Scotland, where he was weak; and he was determined to be even with them in England, where he was powerful. Persecution gradually changed a sect into a faction. That there was

anything in the religious opinions of the Puritans which rendered them hostile to monarchy, has never been proved to our satisfaction. After our civil contests, it became the fashion to say that Presbyterianism was connected with Republicanism; just as it has been the fashion to say, since the time of the French Revolution, that Infidelity is connected with Republicanism. It is perfectly true that a Church, constituted on the Calvinistic model, will not strengthen the hands of the sovereign so much as a hierarchy which consists of several ranks, differing in dignity and emolument, and of which all the members are constantly looking to the government for promotion. But experience has clearly shown that a Calvinistic Church, like every other Church, is disaffected when it is persecuted, quiet when it is tolerated, and actively loyal when it is favoured and cherished. Scotland has had a Presbyterian establishment during a century and a half. Yet her General Assembly has not, during that period, given half so much trouble to the government as the Convocation of the Church of England gave during the thirty years which followed the Revolution. That James and Charles should have been mistaken in this point is not surprising. But we are astonished, we must confess, when writers of our own time, men who have before them the proof of what toleration can effect, men who may see with their own eyes that the Presbyterians are no such monsters when government is wise enough to let them alone, should defend the old persecutions, on the ground that they were indispensable to the safety of the church and of the throne.

How persecution protects churches and thrones was soon made manifest. A systematic political opposition, vehement, daring, and inflexible, sprang from a schism about trifles, altogether unconnected with the real interests of religion or of the state. Before the close of the reign of Elizabeth it began to show itself. It broke forth on the question of the monopolies. Even the imperial Lioness was compelled to abandon her prey, and slowly and fiercely to recede before the assailants. The spirit of liberty grew with the growing wealth and intelligence of the people. The feeble struggles and insults of James irritated instead of suppressing it; and the events which immediately followed the accession of his son portended a contest of no common severity, between a king resolved to be absolute, and a people resolved to be free.

The famous proceedings of the third Parliament of Charles, and the tyrannical measures which followed its dissolution, are extremely well described by Mr. Hallam. No writer, we think, has shown, in so clear and satisfactory a manner, that at that time the Government entertained a fixed purpose of destroying the old parliamentary constitution of England, or at least of reducing it to a mere shadow. We hasten, however, to a part of his work which, though it abounds in valuable information and in remarks well deserving to be attentively considered, and though it is, like the rest, evidently written in a spirit of perfect impartiality, appears to us, in many points, objectionable.

We pass to the year 1640. The fate of the short Parliament held in that year already indicated the views of the King. That a parliament so moderate in feeling should have met after so many years of

oppression is truly wonderful. Hyde extols its loyal and conciliatory spirit. Its conduct, we are told, made the excellent Falkland in love with the very name of Parliament. We think, indeed, with Oliver St. John, that its moderation was carried too far, and that the times required sharper and more decided councils. It was fortunate, however, that the King had another opportunity of showing that hatred of the liberties of his subjects which was the ruling principle of all his conduct. The sole crime of all this assembly was that, meeting after a long intermission of parliaments, and after a long series of cruelties and illegal imposts, they seemed inclined to examine grievances before they would vote supplies. For this insolence they were dissolved almost as soon as they met.

Defeat, universal agitation, financial embarrassments, disorganization in every part of the government, compelled Charles again to convene the House before the close of the same year. Their meeting was one of the great eras in the history of the civilized world. Whatever of political freedom exists either in Europe or in America, has sprung, directly or indirectly, from those institutions which they secured and reformed. We never turn to the annals of those times without feeling increased admiration at the patriotism, the energy, the decision, the consummate wisdom, which marked the measures of that great Parliament, from the day on which it met to the commencement of civil hostilities.

The impeachment of Strafford was the first, and perhaps the greatest blow. The whole conduct of that celebrated man proved that he had formed a deliberate scheme to subvert the fundamental laws of England. Those parts of his correspondence which have been brought to light since his death place the matter beyond a doubt. One of his admirers has, indeed, offered to show "that the passages which Mr. Hallam has invidiously extracted from the correspondence between Laud and Strafford, as proving their design to introduce a thorough tyranny, refer not to any such design, but to a thorough reform in the affairs of state, and the thorough maintenance of just authority." We will recommend two or three of these passages to the especial notice of our readers.

All who know anything of those times, know that the conduct of Hampden in the affair of the ship-money met with the warm approbation of every respectable Royalist in England. It drew forth the ardent eulogies of the champions of the prerogative, and even of the Crown lawyers themselves. Clarendon allows his demeanour through the whole proceeding to have been such, that even those who watched for an occasion against the defender of the people, were compelled to acknowledge themselves unable to find any fault in him. That he was right in the point of law is now universally admitted. Even had it been otherwise; he had a fair case. Five of the Judges, servile as our Courts then were, pronounced in his favour. The majority against him was the smallest possible. In no country retaining the slightest vestige of constitutional liberty, can a modest and decent appeal to the laws be treated as a crime. Strafford, however, recommends that, for taking the sense of a legal tribunal on a legal question, Hampden should be punished, and punished severely, "whipt," said the insolent

apostate, "whipt into his senses. If the rod," he adds, "be so used that it smarts not, I am the more sorry." This is the maintenance of just authority.

In civilized nations, the most arbitrary governments have generally suffered justice to have a free course in private suits. Strafford wished to make every cause in every court subject to the royal prerogative. He complained that in Ireland he was not permitted to meddle in cases between party and party. "I know very well," says he, "that the common lawyers will be passionately against it, who are wont to put such a prejudice upon all other professions, as if none were to be trusted, or capable to administer justice, but themselves; yet how well this suits with monarchy, when they monopolize all to be governed by their year-books, you in England have a costly example." We are really curious to know by what arguments it is to be proved, that the power of interfering in the lawsuits of individuals is part of the just authority of the executive government.

It is not strange that a man so careless of the common civil rights, which even despots have generally respected, should treat with scorn the limitations which the constitution imposes on the royal prerogative. We might quote pages; but we will content ourselves with a single specimen:—"The debts of the Crown being taken off, *you may govern as you please:* and most resolute I am that may be done without borrowing any help forth of the King's lodgings."

Such was the theory of that thorough reform in the state which Strafford meditated. His whole practice from the day on which he sold himself to the court, was in strict conformity to his theory. For his accomplices various excuses may be urged,—ignorance, imbecility, religious bigotry. But Wentworth had no such plea. His intellect was capacious. His early prepossessions were on the side of popular rights. He knew the whole beauty and value of the system which he attempted to deface. He was the first of the Rats, the first of those statesmen whose patriotism has been only the coquetry of political prostitution, and whose profligacy has taught governments to adopt the old maxim of the slave market, that it is cheaper to buy than to breed, to import defenders from an Opposition than to rear them in a Ministry. He was the first Englishman to whom a peerage was not an addition of honour, but a sacrament of infamy, a baptism into the communion of corruption. As he was the earliest of the hateful list, so was he also by far the greatest; eloquent, sagacious, adventurous, intrepid, ready of invention, immutable of purpose, in every talent which exalts or destroys nations pre-eminent, the lost Archangel, the Satan of the apostasy. The title for which, at the time of his desertion, he exchanged a name honourably distinguished in the cause of the people, reminds us of the appellation which, from the moment of the first treason, fixed itself on the fallen Son of the Morning,

> ——"So call him now.—His former name
> Is heard no more in heaven."

The defection of Strafford from the popular party contributed mainly to draw on him the hatred of his contemporaries. It has since made him an object of peculiar interest to those whose lives have been

spent, like his, in proving that there is no malice like the malice of a renegade. Nothing can be more natural or becoming than that one turncoat should eulogize another.

Many enemies of public liberty have been distinguished by their private virtues. But Strafford was the same throughout. As was the statesman, such was the kinsman, and such the lover. His conduct towards Lord Mountmorris is recorded by Clarendon. For a word which can scarcely be called rash, which could not have been made the subject of an ordinary civil action, he dragged a man of high rank, married to a relative of that saint about whom he whimpered to the Peers, before a tribunal of slaves. Sentence of death was passed. Every thing but death was inflicted. Yet the treatment which Lord Ely experienced was still more scandalous. That nobleman was thrown into prison, in order to compel him to settle his estate in a manner agreeable to his daughter-in-law, whom, as there is every reason to believe, Strafford had debauched. These stories do not rest on vague report. The historians most partial to the minister admit their truth, and censure them in terms which, though too lenient for the occasion, are still severe. These facts are alone sufficient to justify the appellation with which Pym branded him, "the wicked Earl."

In spite of all his vices, in spite of all his dangerous projects, Strafford was certainly entitled to the benefit of the law; but of the law in all its rigour; of the law according to the utmost strictness of the letter, which killeth. He was not to be torn in pieces by a mob, or stabbed in the back by an assassin. He was not to have punishment meted out to him from his own iniquitous measure. But if justice, in the whole range of its wide armoury, contained one weapon which could pierce him, that weapon his pursuers were bound, before God and man, to employ.

> ——"If he may
> Find mercy in the law, 'tis his: if none,
> Let him not seek't of us."

Such was the language which the Parliament might justly use.

Did, then, the articles against Strafford strictly amount to high treason? Many people, who know neither what the articles were, nor what high treason is, will answer in the negative, simply because the accused person, speaking for his life, took that ground of defence. The Journals of the Lords show that the Judges were consulted. They answered, with one accord, that the articles on which the Earl was convicted, amounted to high treason. This judicial opinion, even if we suppose it to have been erroneous, goes far to justify the Parliament. The judgment pronounced in the Exchequer Chamber has always been urged by the apologists of Charles in defence of his conduct respecting ship-money. Yet on that occasion there was but a bare majority in favour of the party at whose pleasure all the magistrates composing the tribunal were removable. The decision in the case of Strafford was unanimous; as far as we can judge, it was unbiassed; and, though there may be room for hesitation, we think on the whole that it was reasonable. "It may be remarked," says Mr. Hallam, "that the fifteenth article of the impeachment, charging Strafford with

raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions, upon which, and upon one other article, not upon the whole matter, the Peers voted him guilty, does at least approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying of war against the King." This most sound and just exposition has provoked a very ridiculous reply. "It should seem to be an Irish construction this," says an assailant of Mr. Hallam, "which makes the raising money for the King's service, with his knowledge, and by his approbation, to come under the head of levying war on the King, and therefore to be high treason." Now, people who undertake to write on points of constitutional law should know, what every attorney's clerk and every forward schoolboy on an upper form knows, that by a fundamental maxim of our polity, the King can do no wrong; that every court is bound to suppose his conduct and his sentiments to be, on every occasion, such as they ought to be; and that no evidence can be received for the purpose of setting aside this loyal and salutary presumption. The Lords, therefore, were bound to take it for granted, that the King considered arms unlawfully directed, against his people as directed against his own throne.

The remarks of Mr. Hallam on the bill of attainder, though, as usual, weighty and acute, do not perfectly satisfy us. He defends the principle, but objects to the severity of the punishment. That, on great emergencies, the state may justifiably pass a retrospective act against an offender, we have no doubt whatever. We are acquainted with only one argument on the other side, which has in it enough of reason to bear an answer. Warning, it is said, is the end of punishment. But a punishment inflicted, not by a general rule, but by an arbitrary discretion, cannot serve the purpose of a warning. It is therefore useless; and useless pain ought not to be inflicted. This sophism has found its way into several books on penal legislation. It admits, however, of a very simple refutation. In the first place, punishments *ex post facto* are not altogether useless even as warnings. They are warnings, to a particular class which stand in great need of warnings, as favourites and ministers. They remind persons of this description that there may be a day of reckoning for those who ruin and enslave their country in all the forms of law. But this is not all. Warning is, in ordinary cases, the principal end of punishment; but it is not the only end. To remove the offender, to preserve society from those dangers which are to be apprehended from his incorrigible depravity, is often one of the ends. In the case of such a knave as Wild, or such a ruffian as Thurtell, it is a very important end. In the case of a powerful and wicked statesman, it is infinitely more important; so important as alone to justify the utmost severity, even though it were certain that his fate would not deter others from imitating his example. At present, indeed, we should think it extremely pernicious to take such a course, even with a worse minister than Strafford, if a worse could exist; for, at present, Parliament has only to withhold its support from a Cabinet to produce an immediate change of hands. The case was widely different in the reign of Charles I. That Prince had governed during eleven years without any Parliament; and, even

when Parliament was sitting, had supported Buckingham against its most violent remonstrances.

Mr. Hallam is of opinion that a bill of pains and penalties ought to have been passed against Strafford; but he draws a distinction less just, we think, than his distinctions usually are. His opinion, so far as we can collect it, is this, that there are almost insurmountable objections to retrospective laws for capital punishment, but that, where the punishment stops short of death, the objections are comparatively trifling. Now the practice of taking the severity of the penalty into consideration, when the question is about the mode of procedure and the rules of evidence, is no doubt sufficiently common. We often see a man convicted of a simple larceny on evidence on which he would not be convicted of a burglary. It sometimes happens that a jury, when there is strong suspicion, but not absolute demonstration, that an act, unquestionably amounting to murder, was committed by the prisoner before them, will find him guilty of manslaughter. But this is surely very irrational. The rules of evidence no more depend on the magnitude of the interests at stake than the rules of arithmetic. We might as well say that we have a greater chance of throwing a size when we are playing for a penny than when we are playing for a thousand pounds, as that a form of trial which is sufficient for the purposes of justice in a matter affecting liberty and property, is insufficient in a matter affecting life. Nay, if a mode of proceeding be too lax for capital cases, it is, *à fortiori*, too lax for all others; for, in capital cases, the principles of human nature will always afford considerable security. No judge is so cruel as he who indemnifies himself for scrupulosity in cases of blood, by licence in affairs of smaller importance. The difference in tale on the one side far more than makes up for the difference in weight on the other.

If there be any universal objection to retrospective punishment, there is no more to be said. But such is not the opinion of Mr. Hallam. He approves of the mode of proceeding. He thinks that a punishment, not previously affixed by law to the offences of Strafford, should have been inflicted; that he should have been degraded from his rank, and condemned to perpetual banishment by Act of Parliament, but he sees strong objections to taking away his life. Our difficulty would have been at the first step, and there only. Indeed we can scarcely conceive that any case which does not call for capital punishment can call for retrospective punishment. We can scarcely conceive a man so wicked and so dangerous, that the whole course of law must be disturbed in order to reach him, yet not so wicked as to deserve the severest sentence, nor so dangerous as to require the last and surest custody, that of the grave. If we had thought that Strafford might be safely suffered to live in France, we should have thought it better that he should continue to live in England, than that he should be exiled by a special act. As to degradation, it was not the Earl, but the general and the statesman, whom the people had to fear. Essex said, on that occasion, with more truth than elegance, "Stone dead hath no fellow." And often during the civil wars the Parliament had reason to rejoice, that an irreversible law and an impassable barrier protected them from the valour and capacity of Wentworth.

It is remarkable that neither Hyde nor Falkland voted against the bill of attainder. There is, indeed, reason to believe that Falkland spoke in favour of it. In one respect, as Mr. Hallam has observed, the proceeding was honourably distinguished from others of the same kind. An act was passed to relieve the children of Strafford from the forfeiture and corruption of blood which were the legal consequences of the sentence. The Crown had never shown equal generosity in a case of treason. The liberal conduct of the Commons has been fully and most appropriately repaid. The House of Wentworth has since been as much distinguished by public spirit as by power and splendour, and may at the present time boast of members with whom Say and Hampden would have been proud to act.

It is somewhat curious that the admirers of Strafford should also be, without a single exception, the admirers of Charles; for, whatever we may think of the conduct of the Parliament towards the unhappy favourite, there can be no doubt that the treatment which he received from his master was disgraceful. Faithless alike to his people and to his tools, the King did not scruple to play the part of the cowardly approver, who hangs his accomplice. It is good that there should be such men as Charles in every league of villany. It is for such men that the offers of pardon and reward which appears after a murder are intended. They are indemnified, remunerated, and despised. The very magistrate who avails himself of their assistance looks on them as wretches more degraded than the criminal whom they betray. Was Strafford innocent? Was he a meritorious servant of the Crown? If so, what shall we think of the Prince, who, having solemnly promised him that not a hair of his head should be hurt, and possessing an unquestioned constitutional right to save him, gave him up to the vengeance of his enemies? There were some points which we know that Charles would not concede, and for which he was willing to risk the chances of civil war. Ought not a King, who will make a stand for any thing, to make a stand for the innocent blood? Was Strafford guilty? Even on this supposition, it is difficult not to feel disdain for the partner of his guilt, the tempter turned punisher. If, indeed, from that time forth, the conduct of Charles had been blameless, it might have been said that his eyes were at last opened to the errors of his former conduct, and that, in sacrificing to the wishes of his Parliament a minister whose crime had been a devotion too zealous to the interests of his prerogative, he gave a painful and deeply humiliating proof of the sincerity of his repentance. We may describe the King's behaviour on this occasion in terms resembling those which Hume has employed when speaking of the conduct of Churchill at the Revolution. It required ever after the most rigid justice and sincerity in his dealings with his people to vindicate it. His subsequent dealings with his people, however, clearly showed, that it was not from any respect for the Constitution, or from any sense of the deep criminality of the plans in which Strafford and himself had been engaged, that he gave up his minister to the axe. It became evident that he had abandoned a servant who, deeply guilty as to all others, was guiltless to him alone, solely in order to gain time for maturing other schemes of tyranny, and purchasing the aid of other Wentworths. He, who would not

avail himself of the power which the laws gave him to save a friend to whom his honour was pledged, soon showed that he did not scruple to break every law and forfeit every pledge, in order to work the ruin of his opponents.

"Put not your trust in princes!" was the expression of the fallen minister, when he heard that King Charles had consented to his death. The whole history of the times is a sermon on that bitter text. The defence of the Long Parliament is comprised in the dying words of its victim.

The early measures of that Parliament Mr. Hallam in general approves. But he considers the proceedings which took place after the recess in the summer of 1641, as mischievous and violent. He thinks that, from that time, the demands of the Houses were not warranted by any imminent danger to the Constitution, and that in the war which ensued they were clearly the aggressors. As this is one of the most interesting questions in our history, we venture to state, at some length, the reasons which have led us to form an opinion on it contrary to that of a writer whose judgment we so highly respect.

We will premise that we think worse of King Charles I. than even Mr. Hallam appears to do. The fixed hatred of liberty which was the principle of all his public conduct, the unscrupulousness with which he adopted any means which might enable him to attain his ends, the readiness with which he gave promises, the impudence with which he broke them, the cruel indifference with which he threw away his useless or damaged tools, rendered him, at least till his character was fully exposed and his power shaken to its foundations, a more dangerous enemy to the Constitution than a man of far greater talents and resolution might have been. Such princes may still be seen, the scandals of the southern thrones of Europe—princes false alike to the accomplices who have served them and to the opponents who have spared them—princes who, in the hour of danger, concede every thing, swear every thing, hold out their cheeks to every smiter, give up to punishment every minister of their tyranny, and await with meek and smiling implacability the blessed day of perjury and revenge.[1]

We will pass by the instances of oppression and falsehood which disgraced the early years of the reign of Charles. We will leave out of the question the whole history of his third Parliament, the price which he exacted for assenting to the Petition of Right, the perfidy with which he violated his engagements, the death of Eliot, the barbarous punishments inflicted by the Star-Chamber, the ship-money, and all the measures now universally condemned, which disgraced his administration from 1630 to 1640. We will admit that it might be the duty of the Parliament, after punishing the most guilty of his creatures, after abolishing the inquisitorial tribunals which had been the instruments of his tyranny, after reversing the unjust sentences of his victims, to pause in its course. The concessions which had been made were great, the evils of civil war obvious, the advantages even of victory doubtful. The former errors of the King might be imputed to youth, to the pressure of circumstances, to the influence of evil counsel, to the undefined state of the law. We firmly believe that if, even at this eleventh hour, Charles had acted fairly towards his people, if he had

[1] [This essay was first published in Sept. 1828.—A. M.]

even acted fairly towards his own partisans, the House of Commons would have given him a fair chance of retrieving the public confidence. Such was the opinion of Clarendon. He distinctly states that the fury of opposition had abated, that a reaction had begun to take place, that the majority of those who had taken part against the King were desirous of an honourable and complete reconciliation, and that the more violent, or, as it soon appeared, the more judicious members of the popular party were fast declining in credit. The Remonstrance had been carried with great difficulty. The uncompromising antagonists of the court, such as Cromwell, had begun to talk of selling their estates and leaving England. The event soon showed that they were the only men who really understood how much inhumanity and fraud lay hid under the constitutional language and gracious demeanour of the King.

The attempt to seize the five members was undoubtedly the real cause of the war. From that moment, the loyal confidence with which most of the popular party were beginning to regard the King, was turned into hatred and incurable suspicion. From that moment, the Parliament was compelled to surround itself with defensive arms. From that moment, the city assumed the appearance of a garrison. From that moment, it was, in the phrase of Clarendon, the carriage of Hampden became fiercer, that he drew the sword and threw away the scabbard. For, from that moment, it must have been evident to every impartial observer, that, in the midst of professions, oaths, and smiles, the tyrant was constantly looking forward to an absolute sway and to a bloody revenge.

The advocates of Charles have very dexterously contrived to conceal from their readers the real nature of this transaction. By making concessions apparently candid and ample, they elude the great accusation. They allow that the measure was weak and even frantic, an absurd caprice of Lord Digby, absurdly adopted by the King. And thus they save their client from the full penalty of his transgression, by entering a plea of guilty to the minor offence. To us his conduct appears at this day as at the time it appeared to the Parliament and the city. We think it by no means so foolish as it pleases his friends to represent it, and far more wicked.

In the first place, the transaction was illegal from beginning to end. The impeachment was illegal. The process was illegal. If Charles wished to prosecute the five members for treason, a bill against them should have been sent to a grand jury. That a commoner cannot be tried for high treason by the Lords, at the suit of the Crown, is part of the very alphabet of our law. That no man can be arrested by a message or verbal summons of the King, with or without a warrant from a responsible magistrate, is equally clear. This was an established maxim of our jurisprudence in the time of Edward IV. "A subject," said Chief Justice Markham to that Prince, "may arrest for treason: the King cannot; for, if the arrest be illegal, the party has no remedy against the King."

The time at which Charles took this step also deserves consideration. We have already said that the ardour which the Parliament had displayed at the time of its first meeting had considerably abated,

that the leading opponents of the court were desponding, and that their followers were in general inclined to milder and more temperate measures than those which had hitherto been pursued. In every country, and in none more than in England, there is a disposition to take the part of those who are unmercifully run down, and who seem destitute of all means of defence. Every man who has observed the ebb and flow of public feeling in our own time, will easily recall examples to illustrate this remark. An English statesman ought to pay assiduous worship to Nemesis, to be most apprehensive of ruin when he is at the height of power and popularity, and to dread his enemy most when most completely prostrated. The fate of the Coalition Ministry in 1784, is perhaps the strongest instance in our history of the operation of this principle. A few weeks turned the ablest and most extended Ministry that ever existed into a feeble Opposition, and raised a King who was talking of retiring to Hanover, to a height of power which none of his predecessors had enjoyed since the Revolution. A crisis of this description was evidently approaching in 1642. At such a crisis, a Prince of a really honest and generous nature, who had erred, who had seen his error, who had regretted the lost affections of his people, who rejoiced in the dawning hope of regaining them, would be peculiarly careful to take no step which could give occasion of offence, even to the unreasonable. On the other hand, a tyrant, whose whole life was a lie, who hated the Constitution the more because he had been compelled to feign respect for it, and to whom his honour and the love of his people were as nothing, would select such a crisis for some appalling violation of law, for some stroke which might remove the chiefs of an opposition, and intimidate the herd. This Charles attempted. He missed his blow; but so narrowly, that it would have been mere madness in those at whom it was aimed to trust him again.

It deserves to be remarked that the King had, a short time before, promised the most respectable Royalists in the House of Commons, Falkland, Colepepper, and Hyde, that he would take no measure in which that House was concerned, without consulting them. On this occasion he did not consult them. His conduct astonished them more than any other members of the Assembly. Clarendon says that they were deeply hurt by this want of confidence, and the more hurt, because, if they had been consulted, they would have done their utmost to dissuade Charles from so improper a proceeding. Did it never occur to Clarendon, will it not at least occur to men less partial, that there was good reason for this? When the danger to the throne seemed imminent, the King was ready to put himself for a time into the hands of those who, though they disapproved of his past conduct, thought that the remedies had now become worse than the distempers. But we believe that in his heart he regarded both the parties in the Parliament with feelings of aversion which differed only in the degree of their intensity, and that the awful warning which he proposed to give, by immolating the principal supporters of the Remonstrance, was partly intended for the instruction of those who had concurred in censuring the ship-money, and in abolishing the Star Chamber.

The Commons informed the King that their members should be

forthcoming to answer any charge legally brought against them. The Lords refused to assume the unconstitutional offices with which he attempted to invest them. And what was then his conduct? He went, attended by hundreds of armed men, to seize the objects of his hatred in the House itself. The party opposed to him more than insinuated that his purpose was of the most atrocious kind. We will not condemn him merely on their suspicions. We will not hold him answerable for the sanguinary expressions of the loose brawlers who composed his train. We will judge of his conduct by itself alone. And we say, without hesitation, that it is impossible to acquit him of having meditated violence, and violence which might probably end in blood. He knew that the legality of his proceedings were denied. He must have known that some of the accused members were men not likely to submit peaceably to an illegal arrest. There was every reason to expect that he would find them in their places, that they would refuse to obey his summons, and that the House would support them in their refusal. What course would then have been left to him? Unless we suppose that he went on this expedition for the sole purpose of making himself ridiculous, we must believe that he would have had recourse to force. There would have been a scuffle; and it might not, under such circumstances, have been in his power, even if it were in his inclination, to prevent a scuffle from ending in a massacre. Fortunately for his fame, unfortunately perhaps for what he prized far more, the interests of his hatred and his ambition, the affair ended differently. The birds, as he said, were flown, and his plan was disconcerted. Posterity is not extreme to mark abortive crimes; and thus the King's advocates have found it easy to represent a step which, but for a trivial accident, might have filled England with mourning and dismay, as a mere error of judgment, wild and foolish, but perfectly innocent. Such was not, however, at the time, the opinion of any party. The most zealous Royalists were so much disgusted and ashamed that they suspended their opposition to the popular party, and, silently at least, concurred in measures of precaution so strong as almost to amount to resistance.

From that day, whatever of confidence and loyal attachment had survived the misrule of seventeen years, was, in the great body of the people, extinguished, and extinguished for ever. As soon as the outrage had failed, the hypocrisy recommenced. Down to the very eve of his flagitious attempt, Charles had been talking of his respect for the privileges of Parliament and the liberties of his people. He began again in the same style on the morrow; but it was too late. To trust him now would have been, not moderation, but insanity. What common security would suffice against a Prince who was evidently watching his season with that cold and patient hatred which, in the long run, tires out every other passion?

It is certainly from no admiration of Charles that Mr. Hallam disapproves of the conduct of the Houses in resorting to arms. But he thinks that any attempt on the part of that prince to establish a despotism, would have been as strongly opposed by his adherents as by his enemies; that the Constitution might be considered as out of danger, or, at least, that it had more to apprehend from the war

than from the King. On this subject Mr. Hallam dilates at length, and with conspicuous ability. We will offer a few considerations which lead us to incline to a different opinion.

The Constitution of England was only one of a large family. In all the monarchies of Western Europe, during the middle ages, there existed restraints on the royal authority—fundamental laws and representative assemblies. In the fifteenth century, the government of Castile seems to have been as free as that of our own country. That of Arragon was beyond all question far more so. In France, the sovereign was more absolute. Yet, even in France, the States-General alone could constitutionally impose taxes; and, at the very time when the authority of those assembled was beginning to languish, the Parliament of Paris received such an accession of strength as enabled it, in some measure, to perform the functions of a legislative assembly. Sweden and Denmark had constitutions of a similar description.

Let us overleap two or three hundred years, and contemplate Europe at the commencement of the eighteenth century. Every free constitution, save one, had gone down. That of England had weathered the danger, and was riding in full security. In Denmark and Sweden, the kings had availed themselves of the disputes which raged between the nobles and the commons, to unite all the powers of government in their own hands. In France the institution of the States was only mentioned by lawyers as a part of the ancient theory of their government. It slept a deep sleep, destined to be broken by a tremendous waking. No person remembered the sittings of the three orders, or expected ever to see them renewed. Louis XIV. had imposed on his parliament a patient silence of sixty years. His grandson, after the War of the Spanish Succession, assimilated the constitution of Arragon to that of Castile, and extinguished the last feeble remains of liberty in the Peninsula. In England, on the other hand, the Parliament was infinitely more powerful than it had ever been. Not only was its legislative authority fully established; but its right to interfere, by advice almost equivalent to command, in every department of the executive government, was recognised. The appointment of ministers, the relations with foreign powers, the conduct of a war or a negotiation, depended less on the pleasure of the Prince than on that of the two Houses.

What then made us to differ? Why was it that, in that epidemic malady of constitutions, ours escaped the destroying influence; or rather that, at the very crisis of the disease, a favourable turn took place in England, and in England alone? It was not surely without a cause that so many kindred systems of government, having flourished together so long, languished and expired at almost the same time.

It is the fashion to say, that the progress of civilisation is favourable to liberty. The maxim, though on the whole true, must be limited by many qualifications and exceptions. Wherever a poor and rude nation, in which the form of government is a limited monarchy, receives a great accession of wealth and knowledge, it is in imminent danger of falling under arbitrary power.

In such a state of society as that which existed all over Europe in

the middle ages, it was not from the king but from nobles, that there was danger. Very slight checks sufficed to keep the sovereign in order. His means of corruption and intimidation were very scanty. He had little money, little patronage, no military establishment. His armies resembled juries. They were drafted out of the mass of the people: they soon returned to it again: and the character which was habitual, prevailed over that which was occasional. A campaign of forty days was too short, the discipline of a national militia too lax, to efface from their minds the feelings of civil life. As they carried to the camp the sentiments and interests of the farm and the shop, so they carried back to the farm and the shop the military accomplishments which they had acquired in the camp. At home they learned how to value their rights, abroad how to defend them.

Such a military force as this was a far stronger restraint on the regal power than the legislative assemblies. Resistance to an established government, in modern times so difficult and perilous an enterprise, was, in the fourteenth and fifteenth centuries, the simplest and easiest matter in the world. Indeed, it was far too simple and easy. An insurrection was got up then almost as easily as a petition is got up now. In a popular cause, or even in an unpopular cause favoured by a few great nobles, an army was raised in a week. If the Kings were, like our Edward II. and Richard II., generally odious, he could not procure a single bow or halbert. He fell at once, and without an effort. In such times a sovereign like Louis XV. or the Emperor Paul, would have been pulled down before his misgovernment had lasted a month. We find that all the fame and influence of our Edward III. could not save *his* Madame de Pompadour from the effects of the public hatred.

Hume and many other writers have hastily concluded that, in the fifteenth century, the English Parliament was altogether servile, because it recognised, without opposition, every successful usurper. That it was not servile its conduct on many occasions of inferior importance is sufficient to prove. But surely it was not strange that the majority of the nobles, and of the deputies chosen by the commons, should approve of revolutions which the nobles and commons had effected. The Parliament did not blindly follow the event of war, but participated in those changes of public sentiment on which the event of war depended. The legal check was secondary and auxiliary to that which the nation held in its own hands. There have always been monarchies in Asia, in which the royal authority has been tempered by fundamental laws, though no legislative body exists to watch over them. The guarantee is the opinion of a community of which every individual is a soldier. Thus the king of Cabul, as Mr. Elphinstone informs us, cannot augment the land revenue, or interfere with the jurisdiction of the ordinary tribunals.

In the European kingdoms of this description there were representative assemblies. But it was not necessary that those assemblies should meet very frequently, that they should interfere with all the operations of the executive government, that they should watch with jealousy, and resent with prompt indignation, every violation of the laws which the sovereign might commit. They were so strong that

they might safely be careless. He was so feeble that he might safely be suffered to encroach. If he ventured too far, chastisement and ruin were at hand. In fact, the people generally suffered more from his weakness than from his authority. The tyranny of wealthy and powerful subjects was the characteristic evil of the times. The royal prerogatives were not even sufficient for the defence of property and the maintenance of police.

The progress of civilisation introduced a great change. War became a science, and, as a necessary consequence, a trade. The great body of the people grew every day more reluctant to undergo the inconveniences of military service, and better able to pay others for undergoing them. A new class of men, therefore, dependent on the Crown alone, natural enemies of those popular rights which are to them as the dew to the fleece of Gideon, slaves among freemen, freemen among slaves, grew into importance. That physical force which, in the dark ages, had belonged to the nobles and the commons, and had, far more than any charter or any assembly, been the safeguard of their privileges, was transferred entire to the King. Monarchy gained in two ways. The sovereign was strengthened, the subjects weakened. The great mass of the population, destitute of all military discipline and organisation, ceased to exercise any influence by force on political transactions. There have, indeed, during the last hundred and fifty years, been many popular insurrections in Europe: but all have failed, except those in which the regular army has been induced to join the disaffected.

Those legal checks, which had been adequate for the purpose to which they were designed, while the sovereign remained dependent on his subjects, were now found wanting. The dikes which had been sufficient while the waters were low, were not high enough to keep out the spring-tide. The deluge passed over them; and, according to the exquisite illustration of Butler, the formal boundaries which had excluded it, now held it in. The old constitutions fared like the old shields and coats-of-mail. They were the defences of a rude age: and they did well enough against the weapons of a rude age. But new and more formidable means of destruction were invented. The ancient panoply became useless; and it was thrown aside to rust in lumber-rooms, or exhibited only as part of an idle pageant.

Thus absolute monarchy was established on the Continent. England escaped; but she escaped very narrowly. Happily our insular situation, and the pacific policy of James, rendered standing armies unnecessary here, till they had been for some time kept up in the neighbouring kingdoms. Our public men had therefore an opportunity of watching the effects produced by this momentous change on governments which bore a close analogy to that established in England. Everywhere they saw the power of the monarch increasing, the resistance of assemblies which were no longer supported by a national force gradually becoming more and more feeble, and at length altogether ceasing. The friends and the enemies of liberty perceived with equal clearness the causes of this general decay. It is the favourite theme of Strafford. He advises the King to procure from the Judges a recognition of his right to raise an army at his pleasure. "This

piece well fortified," says he, "for ever vindicates the monarchy at home from under the conditions and restraints of subjects." We firmly believe that he was in the right. Nay; we believe that, even if no deliberate scheme of arbitrary government had been formed by the sovereign and his ministers, there was great reason to apprehend a natural extinction of the Constitution. If, for example, Charles had played the part of Gustavus Adolphus, if he had carried on a popular war for the defence of the Protestant cause in Germany, if he had gratified the national pride by a series of victories, if he had formed an army of forty or fifty thousand devoted soldiers, we do not see what chance the nation would have had of escaping from despotism. The Judges would have given as strong a decision in favour of camp-money as they gave in favour of ship-money. If they had been scrupulous, it would have made little difference. An individual who resisted would have been treated as Charles treated Eliot, and as Strafford wished to treat Hampden. The parliament might have been summoned once in twenty years, to congratulate a King on his accession, or to give solemnity to some great measure of state. Such had been the fate of legislative assemblies as powerful, as much respected, as high-spirited, as the English Lords and Commons.

The two Houses, surrounded by the ruins of so many free constitutions overthrown or sapped by the new military system, were required to entrust the command of an army and the conduct of the Irish war to a King who had proposed to himself the destruction of liberty as the great end of his policy. We are decidedly of opinion that it would have been fatal to comply. Many of those who took the side of the King on this question, would have cursed their own loyalty if they had seen him return from war at the head of twenty thousand troops, accustomed to carnage and to free quarters in Ireland.

We think, with Mr. Hallam, that many of the Royalist nobility and gentry were true friends to the Constitution, and that, but for the solemn protestations by which the King bound himself to govern according to the law for the future, they never would have joined his standard. But surely they underrated the public danger. Falkland is commonly selected as the most respectable specimen of this class. He was indeed a man of great talents and of great virtues, but, we apprehend, infinitely too fastidious for public life. He did not perceive that, in such times as those on which his lot had fallen, the duty of a statesman is to choose the better cause and to stand by it, in spite of those excesses by which every cause, however good in itself, will be disgraced. The present evil ways seemed to him the worst. He was always going backward and forward; but it should be remembered to his honour, that it was always from the stronger to the weaker side that he deserted. While Charles was oppressing the people, Falkland was a resolute champion of liberty. He attacked Strafford. He even concurred in strong measures against Episcopacy. But the violence of his party annoyed him, and drove him to the other party, to be equally annoyed there. Dreading the success of the cause which he had espoused, sickened by the courtiers of Oxford, as he had been sickened by the patriots of Westminster, yet bound by honour not to

abandon them, he pined away, neglected his person, went about moaning for peace, and at last rushed desperately on death, as the best refuge in such miserable times. If he had lived through the scenes that followed, we have little doubt that he would have condemned himself to share the exile and beggary of the royal family; that he would then have returned to oppose all their measures; that he would have been sent to the Tower by the Commons as a disbeliever in the Popish Plot, and by the King as an accomplice in the Rye-house Plot; and that, if he had escaped being hanged, first by Scroggs, and then by Jefferies, he would, after manfully opposing James II. through his whole reign, being seized with a fit of compassion at the very moment of the Revolution, have voted for a regency, and died a nonjuror.

We do not dispute that the royal party contained many excellent men and excellent citizens. But this we say, that they did not discern those times. The peculiar glory of the Houses of Parliament is that, in the great plague and mortality of constitutions, they took their stand between the living and the dead. At the very crisis of our destiny, at the very moment when the fate which had passed on every other nation was about to pass on England, they arrested the danger.

Those who conceive that the parliamentary leaders were desirous merely to maintain the old constitution, and those who represent them as conspiring to subvert it, are equally in error. The old constitution, as we have attempted to show, could not be maintained. The progress of time, the increase of wealth, the diffusion of knowledge, the great change in the European system of war, rendered it impossible that any of the monarchies of the middle ages should continue to exist on the old footing. The prerogative of the crown was constantly advancing. If the privileges of the people were to remain absolutely stationary, they would relatively retrograde. The monarchical and democratical parts of the government were placed in a situation not unlike that of the two brothers in the Fairy Queen, one of whom saw the soil of his inheritance daily washed away by the tide, and joined to that of his rival. The portions had at first been fairly meted out. By a natural and constant transfer, the one had been extended; the other had dwindled to nothing. A new partition, or a compensation, was necessary to restore the original equality.

It was now absolutely necessary to violate the formal part of the constitution, in order to preserve its spirit. This might have been done, as it was done at the Revolution, by expelling the reigning family, and calling to the throne princes who, relying solely on an elective title, would find it necessary to respect the privileges and follow the advice of the assemblies to which they owed every thing, to pass every bill which the Legislature strongly pressed upon them, and to fill the offices of state with men in whom it confided. But, as the two Houses did not choose to change the dynasty, it was necessary that they should do directly what at the Revolution was done indirectly. Nothing is more usual than to hear it said that, if the Long Parliament had contented itself with making such a reform in the government under Charles as was afterwards made under William, it would have had the highest claim to national gratitude; and that in its violence it overshot the mark. But how was it possible to make such a settle-

ment under Charles? Charles was not, like William and the princes of the Hanoverian line, bound by community of interests and dangers to the two Houses. It was therefore necessary that they should bind him by treaty and statute.

Mr. Hallam reprobates, in language which has a little surprised us, the nineteen propositions into which the Parliament digested its scheme. We will ask him whether he does not think that, if James II. had remained in the island, and had been suffered, as he probably would in that case have been suffered, to keep his crown, conditions to the full as hard would have been imposed on him? On the other hand, if the Long Parliament had pronounced the departure of Charles from London an abdication, and had called Essex or Northumberland to the throne, the new prince might have safely been suffered to reign without such restrictions. His situation would have been a sufficient guarantee. In the nineteen propositions we see very little to blame except the articles against the Catholics. These, however, were in the spirit of that age; and to some sturdy churchmen in our own, they may seem to palliate even the good which the Long Parliament effected. The regulation with respect to new creations of Peers is the only other article about which we entertain any doubt.

One of the propositions is, that the judges shall hold their offices during good behaviour. To this surely no exception will be taken. The right of directing the education and marriage of the princes was most properly claimed by the Parliament, on the same ground on which, after the Revolution, it was enacted, that no king, on pain of forfeiting his throne, should espouse a Papist. Unless we condemn a statesman of the Revolution, who conceived that England could not safely be governed by a sovereign married to a Catholic queen, we can scarcely condemn the Long Parliament, because, having a sovereign so situated, they thought it necessary to place him under strict restraints. The influence of Henrietta Maria had already been deeply felt in political affairs. In the regulation of her family, in the education and marriage of her children, it was still more likely to be felt. There might be another Catholic queen; possibly, a Catholic king. Little as we are disposed to join in the vulgar clamour on this subject, we think that such an event ought to be, if possible, averted; and this could only be done, if Charles was to be left on the throne, by placing his domestic arrangements under the control of Parliament.

A veto on the appointment of ministers was demanded. But this veto Parliament has virtually possessed ever since the Revolution. It is no doubt very far better that this power of the Legislature should be exercised as it is now exercised, when any great occasion calls for interference, than that at every change it should have to signify its approbation or disapprobation in form. But, unless a new family had been placed on the throne, we do not see how this power could have been exercised as it is now exercised. We again repeat, that no restraints which could be imposed on the princes who reigned after the Revolution could have added to the security which their title afforded. They were compelled to court their parliaments. But from Charles nothing was to be expected which was not set down in the bond.

It was not stipulated that the King should give up his negative on

acts of Parliament. But the Commons had certainly shown a strong disposition to exact this security also. "Such a doctrine," says Mr. Hallam, "was in this country as repugnant to the whole history of our laws, as it was incompatible with the subsistence of the monarchy in any thing more than a nominal pre-eminence." Now this article has been as completely carried into effect by the Revolution, as if it had been formally inserted in the Bill of Rights and the Act of Settlement. We are surprised, we confess, that Mr. Hallam should attach so much importance to a prerogative which has not been exercised for a hundred and thirty years, which probably will never be exercised again, and which can scarcely, in any conceivable case, be exercised for a salutary purpose.

But the great security, the security that without which every other would have been insufficient, was the power of the sword. This both parties thoroughly understood. The Parliament insisted on having the command of the militia and the direction of the Irish war. "By God, not for an hour!" exclaimed the King. "Keep the militia," said the Queen, after the defeat of the royal party: "Keep the militia; that will bring back every thing." That by the old constitution, no military authority was lodged in the Parliament, Mr. Hallam has clearly shown. That it is a species of authority which ought not to be permanently lodged in large and divided assemblies, must, we think, in fairness be conceded. Opposition, publicity, long discussion, frequent compromise; these are the characteristics of the proceedings in such bodies. Unity, secrecy, decision, are the qualities which military arrangements require. This undoubtedly was an evil. But, on the other hand, at such a crisis, to trust such a king, with the very weapon which, in hands less dangerous, had destroyed so many free constitutions, would have been the extreme of rashness. The jealousy with which the oligarchy of Venice and the States of Holland regarded their generals and armies, induced them perpetually to interfere in matters of which they were incompetent to judge. This policy secured them against military usurpation, but placed them under great disadvantages in war. The uncontrolled power which the King of France exercised over his troops enabled him to conquer his enemies, but enabled him also to oppress his people. Was there any intermediate course? None, we confess, altogether free from objection. But on the whole, we conceive that the best measure would have been that which the Parliament over and over proposed, that for a limited time the power of the sword should be left to the two Houses, and that it should revert to the Crown when the constitution should be firmly established, when the new securities of freedom should be so far strengthened by prescription, that it would be difficult to employ even a standing army for the purpose of subverting them.

Mr. Hallam thinks that the dispute might easily have been compromised, by enacting that the King should have no power to keep a standing army on foot without the consent of Parliament. He reasons as if the question had been merely theoretical, and as if at that time no army had been wanted. "The kingdom," he says, "might have well dispensed, in that age, with any military organisation." Now, we think that Mr. Hallam overlooks the most important circumstance

in the whole case. Ireland was at that moment in rebellion; and a great expedition would obviously be necessary to reduce that kingdom to obedience. The Houses had therefore to consider, not an abstract question of law, but an urgent practical question, directly involving the safety of the state. They had to consider the expediency of immediately giving a great army to a King who was at least as desirous to put down the Parliament of England as to conquer the insurgents of Ireland.

Of course we do not mean to defend all their measures. Far from it. There never was a perfect man. It would, therefore, be the height of absurdity to expect a perfect party or a perfect assembly. For large bodies are far more likely to err than individuals. The passions are inflamed by sympathy; the fear of punishment and the sense of shame are diminished by partition. Every day we see men do for their faction what they would die rather than do for themselves.

No private quarrel ever happens, in which the right and wrong are so exquisitely divided that all the right lies on one side, and all the wrong on the other. But here was a schism which separated a great nation into two parties. Of these parties, each was composed of many smaller parties. Each contained many members, who differed far less from their moderate opponents than from their violent allies. Each reckoned among its supporters many who were determined in their choice by some accident of birth, of connection, or of local situation. Each of them attracted to itself in multitudes those fierce and turbid spirits, to whom the clouds and whirlwinds of the political hurricane are the atmosphere of life. A party, like a camp, has its sutlers and camp-followers, as well as its soldiers. In its progress it collects round it a vast retinue, composed of people who thrive by its custom or are amused by its display, who may be sometimes reckoned, in an ostentatious enumeration, as forming a part of it, but who give no aid to its operations, and take but a languid interest in its success, who relax its discipline and dishonour its flag by their irregularities, and who, after a disaster, are perfectly ready to cut the throats and rifle the baggage of their companions.

Thus it is in every great division; and thus it was in our civil war. On both sides there was, undoubtedly, enough of crime and enough of error to disgust any man who did not reflect that the whole history of the species is nothing but a comparison of crimes and errors. Misanthropy is not the temper which qualifies a man to act in great affairs, or to judge of them.

"Of the Parliament," says Mr. Hallam, "it may be said, I think, with no greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are recorded of them, from their quarrel with the King, to their expulsion by Cromwell." Those who may agree with us in the opinion which we have expressed as to the original demands of the Parliament, will scarcely concur in this strong censure. The propositions which the Houses made at Oxford, at Uxbridge, and at Newcastle, were in strict accordance with these demands. In the darkest period of the war, they showed no disposition to concede any vital principle. In the fulness of their success, they showed no disposition to encroach beyond these limits. In this respect we cannot

but think that they showed justice and generosity, as well as political wisdom and courage.

The Parliament was certainly far from faultless. We fully agree with Mr. Hallam in reprobating their treatment of Laud. For the individual, indeed, we entertain a more unmitigated contempt than for any other character in our history. The fondness with which a portion of the church regards his memory, can be compared only to that perversity of affection, which sometimes leads a mother to select the monster or the idiot of the family as the object of her especial favour. Mr. Hallam has incidentally observed, that, in the correspondence of Laud with Strafford, there are no indications of a sense of duty towards God or man. The admirers of the Archbishop have, in consequence, inflicted upon the public a crowd of extracts designed to prove the contrary. Now, in all those passages, we see nothing which a prelate as wicked as Pope Alexander or Cardinal Dubois might not have written. They indicate no sense of duty to God or man, but simply a strong interest in the prosperity and dignity of the order to which the writer belonged; an interest which, when kept within certain limits, does not deserve censure, but which can never be considered as a virtue. Laud is anxious to accommodate satisfactorily the disputes in the University of Dublin. He regrets to hear that a church is used as a stable, and that the benefices of Ireland are very poor. He is desirous that, however small a congregation may be, service should be regularly performed. He expresses a wish that the judges of the court before which questions of tithe are generally brought, should be selected with a view to the interest of the clergy. All this may be very proper; and it may be very proper that an alderman should stand up for the tolls of his borough, and an East Indian director for the charter of his company. But it is ridiculous to say that these things indicate piety and benevolence. No primate, though he were the most abandoned of mankind, could wish to see the body, with the consequence of which his own consequence was identical, degraded in the public estimation by internal dissensions, by the ruinous state of its edifices, and by the slovenly performance of its rites. We willingly acknowledge that the particular letters in question have very little harm in them; a compliment which cannot often be paid either to the writings or to the actions of Laud.

Bad as the Archbishop was, however, he was not a traitor within the statute. Nor was he by any means so formidable as to be a proper subject for a retrospective ordinance of the legislature. His mind had not expansion enough to comprehend a great scheme, good or bad. His oppressive acts were not, like those of the Earl of Strafford, parts of an extensive system. They were the luxuries in which a mean and irritable disposition indulges itself from day to day, the excesses natural to a little mind in a great place. The severest punishment which the two Houses could have inflicted on him would have been, to set him at liberty and send him to Oxford. There he might have stayed, tortured by his own diabolical temper, hungering for Puritans to pillory and mangle, plaguing the Cavaliers, for want of somebody else to plague, with his peevishness and absurdity, performing grimaces and antics in the cathedral, continuing that incomparable

diary, which we never see without forgetting the vices of his heart in the imbecility of his intellect, minuting down his dreams, counting the drops of blood which fell from his nose, watching the direction of the salt, and listening for the note of the screech-owl. Contemptuous mercy was the only vengeance which it became the Parliament to take on such a ridiculous old bigot.

The Houses, it must be acknowledged, committed great errors in the conduct of the war, or rather one great error, which brought their affairs into a condition requiring the most perilous expedients. The parliamentary leaders of what may be called the first generation, Essex, Manchester, Northumberland, Hollis, even Pym, all the most eminent men, in short, Hampden excepted, were inclined to half measures. They dreaded a decisive victory almost as much as a decisive overthrow. They wished to bring the King into a situation which might render it necessary for him to grant their just and wise demands, but not to subvert the constitution or to change the dynasty. They were afraid of serving the purposes of those fiercer and more determined enemies of monarchy, who now began to show themselves in the lower ranks of the party. The war was, therefore, conducted in a languid and inefficient manner. A resolute leader might have brought it to a close in a month. At the end of three campaigns, however, the event was still dubious; and that it had not been decidedly unfavourable to the cause of liberty, was principally owing to the skill and energy which the more violent Roundheads had displayed in subordinate situations. The conduct of Fairfax and Cromwell at Marston Moor had exhibited a remarkable contrast to that of Essex at Edgehill, and Waller at Lansdowne.

If there be any truth established by the universal experience of nations, it is this, that to carry the spirit of peace into war is a weak and cruel policy. The time of negotiation is the time for deliberation and delay. But when an extreme case calls for that remedy which is in its own nature most violent, and which, in such cases, is a remedy only because it is violent, it is idle to think of mitigating and diluting. Languid war can do nothing which negotiation or submission will not do better: and to act on any other principle is, not to save blood and money, but to squander them.

This the parliamentary leaders found. The third year of hostilities was drawing to a close; and they had not conquered the King. They had not obtained even those advantages which they had expected from a policy obviously erroneous in a military point of view. They had wished to husband their resources. They now found that, in enterprises like theirs, parsimony is the worst profusion. They had hoped to effect a reconciliation. The event taught them that the best way to conciliate is to bring the work of destruction to a speedy termination. By their moderation many lives and much property had been wasted. The angry passions which, if the contest had been short, would have died away almost as soon as they appeared, had fixed themselves in the form of deep and lasting hatred. A military caste had grown up. Those who had been induced to take up arms by the patriotic feelings of citizens, had begun to entertain the professional feelings of soldiers. Above all, the leaders of the party had forfeited

its confidence. If they had, by their valour and abilities, gained a complete victory, their influence might have been sufficient to prevent their associates from abusing it. It was now necessary to choose more resolute and uncompromising commanders. Unhappily the illustrious man who alone united in himself all the talents and virtues which the crisis required, who alone could have saved his country from the present dangers without plunging her into others, who alone could have united all the friends of liberty in obedience to his commanding genius and his venerable name, was no more. Something might still be done. The Houses might still avert that worst of all evils, the triumphant return of an imperious and unprincipled master. They might still preserve London from all the horrors of rapine, massacre, and lust. But their hopes of a victory as spotless as their cause, of a reconciliation which might knit together the hearts of all honest Englishmen for the defence of the public good, of durable tranquillity, of temperate freedom, were buried in the grave of Hampden.

The self-denying ordinance was passed, and the army was remodelled. These measures were undoubtedly full of danger. But all that was left to the Parliament was to take the less of two dangers. And we think that, even if they could have accurately foreseen all that followed, their decision ought to have been the same. Under any circumstances, we should have preferred Cromwell to Charles. But there could be no comparison between Cromwell and Charles victorious, Charles restored, Charles enabled to feed fat all the hungry grudges of his smiling rancour and his cringing pride. The next visit of his Majesty to his faithful Commons would have been more serious than that with which he last honoured them; more serious than that which their own General paid them some years after. The King would scarce have been content with collaring Marten, and praying that the Lord would deliver him from Vane. If, by fatal mismanagement, nothing was left to England but a choice of tyrants, the last tyrant whom she should have chosen was Charles.

From the apprehension of this worst evil the Houses were soon delivered by their new leaders. The armies of Charles were everywhere routed, his fastnesses stormed, his party humbled and subjugated. The King himself fell into the hands of the Parliament; and both the King and the Parliament soon fell into the hands of the army. The fate of both the captives was the same. Both were treated alternately with respect and with insult. At length the natural life of one, and the political life of the other, were terminated by violence; and the power for which both had struggled was united in a single hand. Men naturally sympathise with the calamities of individuals; but they are inclined to look on a fallen party with contempt rather than with pity. Thus misfortune turned the greatest of Parliaments into the despised Rump, and the worst of Kings into the Blessed Martyr.

Mr. Hallam decidedly condemns the execution of Charles; and in all that he says on that subject we heartily agree. We fully concur with him in thinking that a great social schism, such as the civil war, is not to be confounded with an ordinary treason, and that the vanquished ought to be treated according to the rules, not of municipal, but of international law. In this case the distinction is of the less

importance, because both international and municipal law were in favour of Charles. He was a prisoner of war by the former, a King by the latter. By neither was he a traitor. If he had been successful, and had put his leading opponents to death, he would have deserved severe censure; and this without reference to the justice or injustice of his cause. Yet the opponents of Charles, it must be admitted, were technically guilty of treason. He might have sent them to the scaffold without violating any established principle of jurisprudence. He would not have been compelled to overturn the whole constitution in order to reach them. Here his own case differed widely from theirs. Not only was his condemnation in itself a measure which only the strongest necessity could vindicate; but it could not be procured without taking several previous steps, every one of which would have required the strongest necessity to vindicate it. It could not be procured without dissolving the government by military force, without establishing precedents of the most dangerous description, without creating difficulties which the next ten years were spent in removing, without pulling down institutions which it soon became necessary to reconstruct, and setting up others which almost every man was soon impatient to destroy. It was necessary to strike the House of Lords out of the constitution, to exclude members of the House of Commons by force, to make a new crime, a new tribunal, a new mode of procedure. The whole legislative and judicial systems were trampled down for the purpose of taking a single head. Not only those parts of the constitution which the republicans were desirous to destroy, but those which they wished to retain and exalt, were deeply injured by these transactions. High Courts of Justice began to usurp the functions of juries. The remaining delegates of the people were soon driven from their seats by the same military violence which had enabled them to exclude their colleagues.

If Charles had been the last of his line, there would have been an intelligible reason for putting him to death. But the blow which terminated his life at once transferred the allegiance of every Royalist to an heir, and an heir who was at liberty. To kill the individual was, truly, under such circumstances, not to destroy, but to release the King.

We detest the character of Charles; but a man ought not to be removed by a law *ex post facto*, even constitutionally procured, merely because he is detestable. He must also be very dangerous. We can scarcely conceive that any danger which a state can apprehend from any individual, could justify the violent measures which were necessary to procure a sentence against Charles. But in fact the danger amounted to nothing. There was indeed danger from the attachment of a large party to his office. But this danger his execution only increased. His personal influence was little indeed. He had lost the confidence of every party. Churchmen, Catholics, Presbyterians, Independents, his enemies, his friends, his tools, English, Scotch, Irish, all divisions and subdivisions of his people had been deceived by him. His most attached councillors turned away with shame and anguish from his false and hollow policy, plot intertwined with plot, mine sprung beneath mine, agents disowned, promises evaded, one pledge given in private, another in public. "Oh, Mr. Secretary,"

says Clarendon, in a letter to Nicholas, "those stratagems have given me more sad hours than all the misfortunes in war which have befallen the King, and look like the effects of God's anger towards us."

The abilities of Charles were not formidable. His taste in the fine arts was indeed exquisite. He was as good a writer and speaker as any modern sovereign has been. But he was not fit for active life. In negotiation he was always trying to dupe others, and duping only himself. As a soldier, he was feeble, dilatory, and miserably wanting, not in personal courage, but in the presence of mind which his station required. His delay at Gloucester saved the parliamentary party from destruction. At Naseby, in the very crisis of his fortune, his want of self-possession spread a fatal panic through his army. The story which Clarendon tells of that affair, reminds us of the excuses by which Bessus and Bobadil explain their cudgelings. A Scotch nobleman, it seems, begged the King not to run upon his death, took hold of his bridle, and turned his horse round. No man who had much value for his life would have tried to perform the same friendly office on that day for Oliver Cromwell.

One thing, and one alone, could make Charles dangerous—a violent death. His tyranny could not break the high spirit of the English people. His arms could not conquer, his arts could not deceive them; but his humiliation and his execution melted them into a generous compassion. Men who die on a scaffold for political offences almost always die well. The eyes of thousands are fixed upon them. Enemies and admirers are watching their demeanour. Every tone of voice, every change of colour, is to go down to posterity. Escape is impossible. Supplication is vain. In such a situation, pride and despair have often been known to nerve the weakest minds with fortitude adequate to the occasion. Charles died patiently and bravely; not more patiently or bravely, indeed, than many other victims of political rage; not more patiently or bravely than his own Judges, who were not only killed, but tortured; or than Vane, who had always been considered as a timid man. However, his conduct during his trial and at his execution, made a prodigious impression. His subjects began to love his memory as heartily as they had hated his person; and posterity has estimated his character from his death rather than from his life.

To represent Charles as a martyr in the cause of Episcopacy is absurd. Those who put him to death cared as little for the Assembly of Divines as for the Convocation, and would, in all probability, only have hated him the more if he had agreed to set up the Presbyterian discipline. And in spite of the opinion of Mr. Hallam, we are inclined to think that the attachment of Charles to the Church of England was altogether political. Human nature is, indeed, so capricious that there may be a single sensitive point in a conscience which every where else is callous. A man without truth or humanity may have some strange scruples about a trifle. There was one devout warrior in the royal camp, whose piety bore a great resemblance to that which is ascribed to the King. We mean Colonel Turner. That gallant Cavalier was hanged, after the Restoration, for a flagitious burglary. At the gallows he told the crowd that his mind received great consolation from one

reflection: he had always taken off his hat when he went into a church. The character of Charles would scarcely rise in our estimation, if we believed that he was pricked in conscience after the manner of this worthy loyalist, and that while violating all the first rules of Christian morality, he was sincerely scrupulous about church-government. But we acquit him of such weakness. In 1641, he deliberately confirmed the Scotch Declaration, which stated that the government of the church by archbishops and bishops was contrary to the word of God. In 1645, he appears to have offered to set up Popery in Ireland. That a King who had established the Presbyterian religion in one kingdom, and who was willing to establish the Catholic religion in another, should have insurmountable scruples about the ecclesiastical constitution of the third, is altogether incredible. He himself says in his letters that he looks on Episcopacy as a stronger support of monarchical power than even the army. From causes which we have already considered, the Established Church had been, since the Reformation, the great bulwark of the prerogative. Charles wished, therefore, to preserve it. He thought himself necessary both to the Parliament and to the army. He did not foresee, till too late, that, by paltering with the Presbyterians, he should put both them and himself into the power of a fiercer and more daring party. If he had foreseen it, we suspect that the royal blood which still cries to Heaven, every thirtieth of January, for judgments only to be averted by salt-fish and egg-sauce, would never have been shed. One who had swallowed the Scotch Declaration would scarcely strain at the Covenant.

The death of Charles and the strong measures which led to it, raised Cromwell to a height of power fatal to the infant Commonwealth. No men occupy so splendid a place in history as those who have founded monarchies on the ruins of republican institutions. Their glory, if not of the purest, is assuredly of the most seductive and dazzling kind. In nations broken to the curb, in nations long accustomed to be transferred from one tyrant to another, a man without eminent qualities may easily gain supreme power. The defection of a troop of guards, a conspiracy of eunuchs, a popular tumult, might place an indolent senator or a brutal soldier on the throne of the Roman world. Similar revolutions have often occurred in the despotic states of Asia. But a community which has heard the voice of truth and experienced the pleasures of liberty, in which the merits of statesmen and of systems are freely canvassed, in which obedience is paid, not to persons but to laws, in which magistrates are regarded, not as the lords, but as the servants of the public, in which the excitement of party is a necessary of life, in which political warfare is reduced to a system of tactics; such a community is not easily reduced to servitude. Beasts of burden may easily be managed by a new master. But will the wild ass submit to the bonds? Will the unicorn serve and abide by the crib? Will leviathan hold out his nostrils to the hook? The mythological conqueror of the East, whose enchantments reduced wild beasts to the tameness of domestic cattle, and who harnessed lions and tigers to his chariot, is but an imperfect type of those extraordinary minds which have thrown a spell on the fierce spirits of nations unaccustomed to control, and have compelled raging factions

to obey their reins and swell their triumph. The enterprise, be it good or bad, is one which requires a truly great man. It demands courage, activity, energy, wisdom, firmness, conspicuous virtues, or vices so splendid and alluring as to resemble virtues.

Those who have succeeded in this arduous undertaking form a very small and a very remarkable class. Parents of tyranny, heirs of freedom, kings among citizens, citizens among kings, they unite in themselves the characteristics of the system which springs from them, and of the system from which they have sprung. Their reigns shine with a double light, the last and dearest rays of departing freedom mingled with the first and brightest glories of empire in its dawn. Their high qualities lend to despotism itself a charm drawn from the institutions under which they were formed, and which they have destroyed. They resemble Europeans who settle within the Tropics, and carry thither the strength and the energetic habits acquired in regions more propitious to the constitution. They differ as widely from princes nursed in the purple of imperial cradles, as the companions of Gama from their dwarfish and imbecile progeny, which, born in a climate unfavourable to its growth and beauty, degenerates more and more, at every descent, from the qualities of the original conquerors.

In this class three men stand pre-eminent, Cæsar, Cromwell, and Bonaparte. The highest place in this remarkable triumvirate belongs undoubtedly to Cæsar. He united the talents of Bonaparte to those of Cromwell; and he possessed also, what neither Cromwell nor Bonaparte possessed, learning, taste, wit, eloquence, the sentiments and the manners of an accomplished gentleman.

Between Cromwell and Napoleon Mr. Hallam has instituted a parallel, scarcely less ingenious than that which Burke has drawn between Richard Cœur de Lion and Charles XII. of Sweden. In this parallel, however, and indeed throughout his work, we think that he hardly gives Cromwell fair measure. "Cromwell," says he, "far unlike his antitype, never showed any signs of a legislative mind, or any desire to place his renown on that noblest basis, the amelioration of social institutions." The difference in this respect, we conceive, was not in the character of the men, but in the characters of the revolutions by means of which they rose to power. The civil war in England had been undertaken to defend and restore; the republicans of France set themselves to destroy. In England, the principles of the common law had never been disturbed, and most even of its forms had been held sacred. In France, the law and its ministers had been swept away together. In France, therefore, legislation necessarily became the first business of the first settled government which rose on the ruins of the old system. The admirers of Inigo Jones have always maintained that his works are inferior to those of Sir Christopher Wren, only because the great fire of London gave to the latter such a field for the display of his powers as no architect in the history of the world ever possessed. Similar allowance must be made for Cromwell. If he erected little that was new, it was because there had been no general devastation to clear a space for him. As it was, he reformed the representative system in a most judicious manner. He rendered the administration of justice uniform throughout the island. We will

quote a passage from his speech to the Parliament in September, 1656, which contains, we think, stronger indications of a legislative mind, than are to be found in the whole range of orations delivered on such occasions before or since.

"There is one general grievance in the nation. It is the law. I think, I may say it, I have as eminent judges in this land as have been had, or that the nation has had for these many years. Truly, I could be particular as to the executive part, to the administration; but that would trouble you. But the truth of it is, there are wicked and abominable laws that will be in your power to alter. To hang a man for sixpence, threepence, I know not what—to hang for a trifle, and pardon murder, is in the ministration of the law through the ill framing of it. I have known in my experience abominable murders quitted; and to see men lose their lives for petty matters! This is a thing that God will reckon for; and I wish it may not lie upon this nation a day longer than you have an opportunity to give a remedy; and I hope I shall cheerfully join with you in it."

Mr. Hallam truly says, that though it is impossible to rank Cromwell with Napoleon as a general, yet "his exploits were as much above the level of his contemporaries, and more the effects of an original uneducated capacity." Bonaparte was trained in the best military schools; the army which he led to Italy was one of the finest that ever existed. Cromwell passed his youth and the prime of his manhood in a civil situation. He never looked on war till he was more than forty years old. He had first to form himself, and then to form his troops. Out of raw levies he created an army, the bravest and the best disciplined, the most orderly in peace, and the most terrible in war, that Europe had seen. He called this body into existence. He led it to conquest. He never fought a battle without gaining it. He never gained a victory without annihilating the force opposed to him. Yet his triumphs were not the highest glory of his military system. The respect which his troops paid to property, their attachment to the laws and religion of their country, their submission to the civil power, their temperance, their intelligence, their industry, are without parallel. It was after the Restoration that the spirit which their great leader had infused into them was most signally displayed. At the command of the established government, a government which had no means of enforcing obedience, fifty thousand soldiers, whose backs no enemy had ever seen, either in domestic or in continental war, laid down their arms, and retired into the mass of the people, thenceforward to be distinguished only by superior diligence, sobriety, and regularity in the pursuits of peace, from the other members of the community which they had saved.

In the general spirit and character of his administration we think Cromwell far superior to Napoleon. "In civil government," says Mr. Hallam, "there can be no adequate parallel between one who had sucked only the dregs of a besotted fanaticism, and one to whom the stores of reason and philosophy were open." These expressions, it seems to us, convey the highest eulogium on our great countryman. Reason and philosophy did not teach the conqueror of Europe to command his passions, or to pursue, as a first object, the happiness of his people. They did not prevent him from risking his fame and his power in a

frantic contest against the principles of human nature and the laws of the physical world, against the rage of the winter and the liberty of the sea. They did not exempt him from the influence of that most pernicious of superstitions, a presumptuous fatalism. They did not preserve him from the inebriation of prosperity, or restrain him from indecent querulousness and violence in adversity. On the other hand, the fanaticism of Cromwell never urged him on impracticable undertakings, or confused his perception of the public good. Inferior to Bonaparte in invention, he was far superior to him in wisdom. The French Emperor is among conquerors what Voltaire is among writers, a miraculous child. His splendid genius was frequently clouded by fits of humour as absurdly perverse as those of the pet of the nursery, who quarrels with his food, and dashes his playthings to pieces. Cromwell was emphatically a man He possessed, in an eminent degree, that masculine and full-grown robustness of mind, that equally diffused intellectual health, which, if our national partiality does not mislead us, has peculiarly characterised the great men of England. Never was any ruler so conspicuously born for sovereignty. The cup which has intoxicated almost all others sobered him. His spirit, restless from its own buoyancy in a lower sphere, reposed in majestic placidity as soon as it had reached the level congenial to it. He had nothing in common with that large class of men who distinguish themselves in lower posts, and whose incapacity becomes obvious as soon as the public voice summons them to take the lead. Rapidly as his fortunes grew, his mind expanded more rapidly still. Insignificant as a private citizen, he was a great general; he was a still greater prince. The manner of Napoleon was a theatrical compound, in which the coarseness of a revolutionary guard-room was blended with the ceremony of the old Court of Versailles. Cromwell, by the confession even of his enemies, exhibited in his demeanour the simple and natural nobleness of a man neither ashamed of his origin nor vain of his elevation, of a man who had found his proper place in society, and who felt secure that he was competent to fill it. Easy, even to familiarity, where his own dignity was concerned, he was punctilious only for his country. His own character he left to take care of itself; he left it to be defended by his victories in war, and his reforms in peace. But he was a jealous and implacable guardian of the public honour. He suffered a crazy Quaker to insult him in the midst of Whitehall, and revenged himself only by liberating him and giving him a dinner. But he was prepared to risk the chances of war to avenge the blood of a private Englishman.

No sovereign ever carried to the throne so large a portion of the best qualities of the middling orders, so strong a sympathy with the feelings and interests of his people. He was sometimes driven to arbitrary measures; but he had a high, stout, honest, English heart. Hence it was that he loved to surround his throne with such men as Hale and Blake. Hence it was that he allowed so large a share of political liberty to his subjects, and that, even when an opposition dangerous to his power and to his person almost compelled him to govern by the sword, he was still anxious to leave a germ from which, at a more favourable season, free institutions might spring. We

firmly believe that, if his first Parliament had not commenced its debates by disputing his title, his government would have been as mild at home as it was energetic and able abroad. He was a soldier; he had risen by war. Had his ambition been of an impure or selfish kind, it would have been easy for him to plunge his country into continental hostilities on a large scale, and to dazzle the restless factions which he ruled, by the splendour of his victories. Some of his enemies have sneeringly remarked, that in the successes obtained under his administration he had no personal share; as if a man who had raised himself from obscurity to empire solely by his military talents, could have any unworthy reason for shrinking from military enterprise. This reproach is his highest glory. In the success of the English navy he could have no selfish interest. Its triumphs added nothing to his fame; its increase added nothing to his means of overawing his enemies; its great leader was not his friend. Yet he took a peculiar pleasure in encouraging that noble service which, of all the instruments employed by an English government, is the most impotent for mischief, and the most powerful for good. His administration was glorious, but with no vulgar glory. It was not one of those periods of overstrained and convulsive exertion which necessarily produce debility and languor. Its energy was natural, healthful, temperate. He placed England at the head of the Protestant interest, and in the first rank of Christian Powers. He taught every nation to value her friendship and to dread her enmity. But he did not squander her resources in a vain attempt to invest her with that supremacy which no power, in the modern system of Europe, can safely affect, or can long retain.

This noble and sober wisdom had its reward. If he did not carry the banners of the Commonwealth in triumph to distant capitals, if he did not adorn Whitehall with the spoils of the Stadthouse and the Louvre, if he did not portion out Flanders and Germany into principalities for his kinsmen and his generals, he did not, on the other hand, see his country overrun by the armies of nations which his ambition had provoked. He did not drag out the last years of his life an exile and a prisoner, in an unhealthy climate and under an ungenerous jailer, raging with the impotent desire of vengeance, and brooding over visions of departed glory. He went down to his grave in the fulness of his power and his fame; and he left to his son an authority which any man of ordinary firmness and prudence would have retained.

But for the weakness of that foolish Ishbosheth, the opinions which we have been expressing would, we believe, now have formed the orthodox creed of good Englishmen. We might now be writing under the government of his Highness Oliver V. or Richard IV., Protector, by the grace of God, of the Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging. The form of the great founder of the dynasty on horseback, as when he led the charge at Naseby, or on foot, as when he took the mace from the table of the Commons, would adorn our squares and overlook our public offices from Charing-Cross; and sermons in his praise would be duly preached on his lucky day, the third of Septem-

ber, by court-chaplains, guiltless of the abomination of the surplice.

But, though his memory has not been taken under the patronage of any party, though every device has been used to blacken it, though to praise him would long have been a punishable crime, yet truth and merit at last prevail. Cowards who had trembled at the very sound of his name, tools of office who, like Downing, had been proud of the honour of lacqueying his coach, might insult him in loyal speeches and addresses. Venal poets might transfer to the King the same eulogies, little the worse for wear, which they had bestowed on the Protector. A fickle multitude might crowd to shout and scoff round the gibbeted remains of the greatest Prince and Soldier of the age. But when the Dutch cannon startled an effeminate tyrant in his own palace, when the conquests which had been made by the armies of Cromwell were sold to pamper the harlots of Charles, when Englishmen were sent to fight under the banners of France, against the independence of Europe and the Protestant religion, many honest hearts swelled in secret at the thought of one who had never suffered his country to be ill used by any but himself. It must indeed have been difficult for any Englishman to see the salaried Viceroy of France, at the most important crisis of his fate, sauntering through his harem, yawning and talking nonsense over a despatch, or beslobbering his brother and his courtiers in a fit of maudlin affection,[1] without a respectful and tender remembrance of him before whose genius the young pride of Louis and the veteran craft of Mazarine had stood rebuked, who had humbled Spain on the land and Holland on the sea, and whose imperial voice had arrested the victorious arms of Sweden and the persecuting fires of Rome. Even to the present day his character though constantly attacked, and scarcely ever defended, is popular with the great body of our countrymen.

The most questionable act of his life was the execution of Charles. We have already strongly condemned that proceeding; but we by no means consider it as one which attaches any peculiar stigma of infamy to the names of those who participated in it. It was an unjust and an injudicious display of violent party spirit; but it was not a cruel or perfidious measure. It had all those features which distinguish the errors of magnanimous and intrepid spirits from base and malignant crimes.

We cannot quit this interesting topic without saying a few words on a transaction, which Mr. Hallam has made the subject of a severe accusation against Cromwell; and which has been made by others the subject of a severe accusation against Mr. Hallam. We conceive that both the Protector and the historian may be vindicated. Mr. Hallam tells us that Cromwell sold fifty English gentlemen as slaves in Barbadoes. For making this statement he has been charged with two high literary crimes. The first accusation is, that, from his violent prejudices against Oliver, he has calumniated him falsely. The second, preferred by the same accuser, is, that from his violent fondness for the same Oliver, he has hidden his calumnies against him, at the fag-end

[1] Such exhibitions by Charles II., and many more of the same kind, are recorded by Pepys. See Murray's Reprint, edit. 1872.

of a note, instead of putting them into the text. Both these imputations cannot possibly be true, and it happens that neither is so. His censors will find, when they take the trouble to read his book, that the story is mentioned in the text as well as in the notes; and they will also find, when they take the trouble to read some other books, with which speculators on English history ought to be acquainted, that the story is true. If there could have been any doubt about the matter, Burton's Diary must have set it at rest. But, in truth, there was abundant and superabundant evidence before the appearance of that valuable publication. Not to mention the authority to which Mr. Hallam refers, and which alone is perfectly satisfactory, there is Slingsby Bethel's account of the proceedings of Richard Cromwell's Parliament, published immediately after its dissolution. He was a member; he must, therefore, have known what happened; and, violent as his prejudices were, he never could have been such an idiot as to state positive falsehoods with respect to public transactions which had taken place only a few days before.

It will not be quite so easy to defend Cromwell against Mr. Hallam, as to defend Mr. Hallam against those who attack his history. But the story is certainly by no means so bad as he takes it to be. In the first place, this slavery was merely the compulsory labour to which every transported convict is liable. Nobody acquainted with the language of the last century can be ignorant that such convicts were generally termed slaves; until discussions about another species of slavery, far more miserable and altogether unmerited, rendered the word too odious to be applied even to felons of English origin. These persons enjoyed the protection of the law during the term of their service, which was only five years. The punishment of transportation has been inflicted, by almost every government that England has ever had, for political offences. After Monmouth's insurrection, and after the rebellions in 1715 and 1745, great numbers of the prisoners were sent to America. These considerations ought, we think, to free Cromwell from the imputation of having inflicted on his enemies any punishment which in itself is of a shocking and atrocious character.

To transport fifty men, however, without a trial, is bad enough. But let us consider, in the first place, that some of these men were taken in arms against the Government, and that it is not clear that they were not all so taken. In that case, Cromwell or his officers might, according to the usage of those unhappy times, have put them to the sword, or turned them over to the provost-marshal at once. This, we allow, is not a complete vindication; for execution by martial law ought never to take place but under circumstances which admit of no delay; and if there is time to transport men, there will be time to try them.

The defenders of the measure stated in the House of Commons, that the persons thus transported not only consented to go, but went with remarkable cheerfulness. By this, we suppose, it is to be understood, not that they had any very violent desire to be bound apprentices in Barbadoes, but that they considered themselves as, on the whole, fortunate and leniently treated, in the situation in which they had placed themselves.

When these considerations are fairly estimated, it must, we think, be allowed, that this selling into slavery was not, as it seems at first sight, a barbarous outrage, unprecedented in our annals, but merely a very arbitrary proceeding, which, like most of the arbitrary proceedings of Cromwell, was rather a violation of positive law than of any great principles of justice and mercy. When Mr. Hallam declares it to have been more oppressive than any of the measures of Charles II., he forgets, we imagine, that under the reign of that prince, and during the administration of Lord Clarendon, many of the Roundheads were, without any trial, imprisoned at a distance from England, merely in order to remove them beyond the reach of the great liberating writ of our law. But, in fact, it is not fair to compare the cases. The Government of Charles was perfectly secure. The "*seo dura et regni novitas*," is the great apology of Cromwell.

From the moment that Cromwell is dead and buried, we go on in almost perfect harmony with Mr. Hallam to the end of his book. The times which followed the Restoration peculiarly require that unsparing impartiality which is his most distinguishing virtue. No part of our history, during the last three centuries, presents a spectacle of such general weariness. The whole breed of our statesmen seems to have degenerated; and their moral and intellectual littleness strikes us with the more disgust, because we see it placed in immediate contrast with the high and majestic qualities of the race which they succeeded. In the great civil war, even the bad cause had been rendered respectable and amiable by the purity and elevation of mind which many of its friends displayed. Under Charles II., the best and noblest of ends was disgraced by means the most cruel and sordid. The rage of faction succeeded to the love of liberty. Loyalty died away into servility. We look in vain among the leading politicians of either side for steadiness of principle, or even for that vulgar fidelity to party which, in our time, it is esteemed infamous to violate. The inconsistency, perfidy, and baseness, which the leaders constantly practised, which their followers defended, and which the great body of the people regarded, as, it seems, with little disapprobation, appear in the present age almost incredible. In the age of Charles I., they would, we believe, have excited as much astonishment.

Man, however, is always the same. And when so marked a difference appears between two generations, it is certain that the solution may be found in their respective circumstances. The principal statesmen of the reign of Charles II. were trained during the civil war and the revolutions which followed it. Such a period is eminently favourable to the growth of quick and active talents. It forms a class of men, shrewd, vigilant, inventive; of men, whose dexterity triumphs over the most perplexing combinations of circumstances, whose presaging instinct no sign of the times, no incipient change of public feeling, can elude. But it is an unpropitious season for the firm and masculine virtues. The statesman who enters on his career at such a time, can form no permanent connections, can make no accurate observations on the higher parts of political science. Before he can attach himself to a party, it is scattered. Before he can study the nature of a government, it is overturned. The oath of abjuration comes close on the

oath of allegiance. The association which was subscribed yesterday is burned by the hangman to-day. In the midst of the constant eddy and change, self-preservation becomes the first object of the adventurer. It is a task too hard for the strongest head to keep itself from becoming giddy in the eternal whirl. Public spirit is out of the question. A laxity of principle, without which no public man can be eminent or even safe, becomes too common to be scandalous; and the whole nation looks coolly on instances of apostasy which would startle the foulest turncoat of more settled times.

The history of France since the Revolution affords some striking illustrations of these remarks. The same man was minister of the Republic, of Bonaparte, of Louis XVIII., of Bonaparte again after his return from Elba, of Louis again after his return from Ghent. Yet all these manifold treasons by no means seemed to destroy his influence, or even to fix any peculiar stain of infamy on his character. We, to be sure, did not know what to make of him; but his countrymen did not seem to be shocked; and in truth they had little right to be shocked: for there was scarcely one Frenchman distinguished in the state or in the army, who had not, according to the best of his talents and opportunities, emulated the example. It was natural, too, that this should be the case. The rapidity and violence with which change followed change in the affairs of France towards the close of the last century, had taken away the reproach of inconsistency, unfixed the principles of public men, and produced in many minds a general scepticism and indifference about principles of government.

No Englishman who has studied attentively the reign of Charles II. will think himself entitled to indulge in any feelings of national superiority over the *Dictionnaire des Girouettes*. Shaftesbury was surely a far less respectable man than Talleyrand; and it would be injustice even to Fouché to compare him with Lauderdale. Nothing, indeed, can more clearly show how low the standard of political morality had fallen in this country than the fortunes of the men whom we have named. The Government wanted a ruffian to carry on the most atrocious system of misgovernment with which any nation was ever cursed, to extirpate Presbyterianism by fire and sword, the drowning of women, and the frightful torture of the boot. And they found him among the chiefs of the rebellion and the subscribers of the Covenant. The opposition looked for a chief to head them in the most desperate attacks ever made, under the forms of the Constitution, on any English administration: and they selected the minister who had the deepest share in the worst parts of that administration, the soul of the Cabal, the counsellor who had shut up the Exchequer and urged on the Dutch war. The whole political drama was of the same cast. No unity of plan, no decent propriety of character and costume, could be found in the wild and monstrous harlequinade. The whole was made up of extravagant transformations and burlesque contrasts; Atheists turned Puritans; Puritans turned Atheists; republicans defending the divine right of Kings; prostitute courtiers clamouring for the liberties of the people; judges inflaming the rage of mobs; patriots pocketing bribes from foreign powers; a Popish prince torturing Presbyterians into Episcopacy in one part of the island; Presbyterians cutting off

the heads of Popish noblemen and gentlemen in the other. Public opinion has its natural flux and reflux. After a violent burst, there is commonly a reaction. But vicissitudes so extraordinary as those which marked the reign of Charles II., can only be explained by supposing an utter want of principle in the political world. On neither side was there fidelity enough to face a reverse. Those honourable retreats from power, which, in later days, parties have often made, with loss, but still in good order, in firm union, with unbroken spirit and formidable means of annoyance, were utterly unknown. As soon as a check took place a total rout followed: arms and colours were thrown away. The vanquished troops, like the Italian mercenaries of the fourteenth and fifteenth centuries, enlisted on the very field of battle in the service of the conquerors. In a nation proud of its sturdy justice and plain good sense, no party could be found to take a firm middle stand between the worst of oppositions and the worst of courts. When, on charges as wild as Mother Goose's tales, on the testimony of wretches who proclaimed themselves to be spies and traitors, and whom everybody now believes to have been also liars and murderers, the offal of jails and brothels, the leavings of the hangman's whip and shears, Catholics guilty of nothing but their religion were led like sheep to the Protestant shambles, where were the loyal Tory gentry and the passively obedient clergy? And where, when the time of retribution came, when laws were strained, and juries packed to destroy the leaders of the Whigs, when charters were invaded, when Jefferies and Kirke were making Somersetshire what Lauderdale and Graham had made Scotland, where were the ten thousand brisk boys of Shaftesbury, the members of ignoramus juries, the wearers of the Polish medal? All-powerful to destroy others, unable to save themselves, the members of the two parties oppressed and were oppressed, murdered and were murdered, in their turn. No lucid interval occurred between the frantic paroxysms of two contradictory illusions.

To the frequent changes of the government during the twenty years which had preceded the Restoration, this unsteadiness is in a great measure to be attributed. Other causes had also been at work. Even if the country had been governed by the House of Cromwell or the remains of the Long Parliament, the extreme austerity of the Puritans would necessarily have produced a revulsion. Towards the close of the Protectorate many signs indicated that a time of licence was at hand. But the restoration of Charles II. rendered the change wonderfully rapid and violent. Profligacy became a test of orthodoxy and loyalty, a qualification for rank and office. A deep and general taint infected the morals of the most influential classes, and spread itself through every province of letters. Poetry inflamed the passions; philosophy undermined the principles; divinity itself inculcating an abject reverence for the Court, gave additional effect to its licentious example. We look in vain for those qualities which lend a charm to the errors of high and ardent natures, for the generosity, the tenderness, the chivalrous delicacy, which ennoble appetites into passions, and impart to vice itself a portion of the majesty of virtue. The excesses of that age remind us of the humours of a gang of foot-

pads, revelling with their favourite beauties at a flash-house. In the fashionable libertinism there is a hard, cold ferocity, an impudence, a lowness, a dirtiness, which can be paralleled only among the heroes and heroines of that filthy and heartless literature which encouraged it. One nobleman of great abilities wanders about as a Merry-Andrew. Another harangues the mob stark naked from a window. A third lays in ambush to cudgel a man who has offended him. A knot of gentlemen of high rank and influence combine to push their fortunes at court by circulating stories intended to ruin an innocent girl, stories which had no foundation, and which, if they had been true, would never have passed the lips of a man of honour.[1] A dead child is found in the palace, the offspring of some maid of honour by some courtier, or perhaps by Charles himself. The whole flight of panders and buffoons pounce upon it, and carry it in triumph to the royal laboratory, where his Majesty, after a brutal jest, dissects it for the amusement of the assembly, and probably of its father among the rest. The favourite Duchess stamps about Whitehall, cursing and swearing. The ministers employ their time at the council-board in making mouths at each other, and taking off each other's gestures for the amusement of the King. The Peers at a conference begin to pommel each other, and to tear collars and periwigs. A speaker in the House of Commons gives offence to the court. He is waylaid by a gang of bullies, and his nose is cut to the bone. This ignominious dissoluteness, or rather, if we may venture to designate it by the only proper word, blackguardism of feeling and manners, could not but spread from private to public life. The cynical sneers, the epicurean sophistry, which had driven honour and virtue from one part of the character, extended their influence over every other. The second generation of the statesmen of this reign were worthy pupils of the schools in which they had been trained, of the gaming-table of Grammont, and the tiring-room of Nell. In no other age could such a trifler as Buckingham have exercised any political influence. In no other age could the path to power and glory have been thrown open to the manifold infamies of Churchill.

The history of that celebrated man shows, more clearly perhaps than that of any other individual, the malignity and extent of the corruption which had eaten into the heart of the public morality. An English gentleman of family attaches himself to a Prince who has seduced his sister, and accepts rank and wealth as the price of her shame and his own. He then repays by ingratitude the benefits which he has purchased by ignominy, betrays his patron in a manner which the best cause cannot excuse, and commits an act not only of private treachery, but of distinct military desertion. To his conduct at the crisis of the fate of James, no service in modern times has, as far as we remember, furnished any parallel. The conduct of Ney, scandalous enough no doubt, is the very fastidiousness of honour in comparison of it. The perfidy of Arnold approaches it most nearly. In our age and country no talents, no services, no party attachments, could bear any man up under such mountains of infamy. Yet, even before

[1] The manner in which Hamilton relates the circumstances of the atrocious plot against poor Anne Hyde, is, if possible, more disgraceful to the court, of which he may be considered as a specimen, than the plot itself.

Churchill had performed those great actions which in some degree redeem his character with posterity, the load lay very lightly on him. He had others in abundance to keep him in countenance. Godolphin, Orford, Danby, the trimmer Halifax, the renegade Sunderland, were all men of the same class.

Where such was the political morality of the noble and the wealthy, it may easily be conceived that those professions which, even in the best times, are peculiarly liable to corruption, were in a frightful state. Such a bench and such a bar England has never seen. Jones, Scroggs, Jefferies, North, Wright, Sawyer, Williams, Shower, are to this day the spots and blemishes of our legal chronicles. Differing in constitution and in situation, whether blustering or cringing, whether persecuting Protestants or Catholics, they were equally unprincipled and inhuman. The part which the Church played was not equally atrocious; but it must have been exquisitely diverting to a scoffer. Never were principles so loudly professed, and so flagrantly abandoned. The Royal prerogative had been magnified to the skies in theological works. The doctrine of passive obedience had been preached from innumerable pulpits. The University of Oxford had sentenced the works of the most moderate constitutionalists to the flames. The accession of a Catholic King, the frightful cruelties committed in the west of England, never shook the steady loyalty of the clergy. But did they serve the King for nought? He laid his hand on them, and they cursed him to his face. He touched the revenue of a college and the liberty of some prelates; and the whole profession set up a yell worthy of Hugh Peters himself. Oxford sent her plate to an invader with more alacrity than she had shown when Charles I. requested it. Nothing was said about the wickedness of resistance till resistance had done its work, till the anointed vicegerent of Heaven had been driven away, and it had become plain that he would never be restored, or would be restored at least under strict limitations. The clergy went back, it must be owned, to their old theory, as soon as they found that it would do them no harm.

To the general baseness and profligacy of the times Clarendon is principally indebted for his high reputation. He was, in every respect, a man unfit for his age, at once too good for it and too bad for it. He seemed to be one of the statesmen of Elizabeth, transplanted at once to a state of society widely different from that in which the abilities of such statesmen had been serviceable. In the sixteenth century, the Royal prerogative had scarcely been called in question. A minister who held it high was in no danger, so long as he used it well. That attachment to the Crown, that extreme jealousy of popular encroachments, that love, half religious, half political, for the Church, which, from the beginning of the Long Parliament, showed itself in Clarendon, and his sufferings, his long residence in France, and his high station in the government, served to strengthen, would, a hundred years earlier, have secured to him the favour of his sovereign without rendering him odious to the people. His probity, his correctness in private life, his decency of deportment, and his general ability, would not have misbecome a colleague of Walsingham and Burleigh. But, in the times on which he was cast, his errors and his virtues were alike

out of place. He imprisoned men without trial. He was accused of raising unlawful contributions on the people for the support of the army. The abolition of the Triennial Act was one of his favourite objects. He seems to have meditated the revival of the Star Chamber and the High Commission Court. His zeal for the prerogative made him unpopular; but it could not secure to him the favour of a master far more desirous of ease and pleasure than of power. Charles would rather have lived in exile and privacy, with abundance of money, a crowd of mimics to amuse him, and a score of mistresses, than have purchased the absolute dominion of the world by the privations and exertions to which Clarendon was constantly urging him. A councillor who was always bringing him papers and giving him advice, and who stoutly refused to compliment Lady Castlemaine and to carry messages to Miss Stewart, soon became more hateful to him than ever Cromwell had been. Thus, considered by the people as an oppressor, by the Court as a censor, the Minister fell from his high office with a ruin more violent and destructive than could ever have been his fate, if he had either respected the principles of the Constitution or flattered the vices of the King.

Mr. Hallam has formed, we think, a most correct estimate of the character and administration of Clarendon. But he scarcely makes a sufficient allowance for the wear and tear which honesty almost necessarily sustains in the friction of political life, and which in times so rough as those through which Clarendon passed, must be very considerable. When these are fairly estimated, we think that his integrity may be allowed to pass muster. A high-minded man he certainly was not, either in public or in private affairs. His own account of his conduct in the affair of his daughter is the most extraordinary passage in autobiography. We except nothing even in the confessions of Rousseau. Several writers have taken a perverted and absurd pride in representing themselves as detestable; but no other ever laboured hard to make himself despicable and ridiculous. In one important particular Clarendon showed as little regard to the honour of his country as he had shown to that of his family. He accepted a subsidy from France for the relief of Portugal. But this method of obtaining money was soon afterwards practised to a much greater extent, and for objects much less respectable, both by the Court and by the Opposition.

These pecuniary transactions are commonly considered as the most disgraceful part of the history of those times; and they were no doubt highly reprehensible. Yet, in justice to the Whigs and to Charles himself, we must admit that they were not so shameful or atrocious as at the present day they appear. The effect of violent animosities between parties, has always been an indifference to the general welfare and honour of the State. A politician, where factions run high, is interested not for the whole people, but for his own section of it. The rest are, in his view, strangers, enemies, or rather pirates. The strongest aversion which he can feel to any foreign power is the ardour of friendship, compared with the loathing which he entertains towards those domestic foes with whom he is cooped up in a narrow space, with whom he lives in a constant interchange of petty injuries and

insults, and from whom, in the day of their success, he has to expect severities far beyond any that a conqueror from a distant country would inflict. Thus, in Greece, it was a point of honour for a man to leave his country and cleave to his party. No aristocratical citizen of Samos or Corcyra would have hesitated to call in the aid of Lacedæmon. The multitude, on the contrary, looked to Athens. In the Italian states of the thirteenth and fourteenth centuries, from the same cause, no man was so much a Florentine or a Pisan as a Ghibeline or a Guelf. It may be doubted whether there was a single individual who would have scrupled to raise his party from a state of depression, by opening the gates of his native city to a French or an Aragonese force. The Reformation, dividing almost every European country into two parts, produced similar effects. The Catholic was too strong for the Englishman, the Huguenot for the Frenchman. The Protestant statesmen of Scotland and France accordingly called in the aid of Elizabeth; and the Papists of the League brought a Spanish army into the very heart of France. The commotions to which the French Revolution gave rise have been followed by the same consequences. The Republicans in every part of Europe were eager to see the armies of the National Convention and the Directory appear among them, and exulted in defeats which distressed and humbled those whom they considered as their worst enemies, their own rulers. The princes and nobles of France, on the other hand, did their utmost to bring invaders to Paris. A very short time has elapsed since the Apostolical party in Spain invoked, too successfully, the support of strangers.

The great contest which raged in England during the seventeenth century, and the earlier part of the eighteenth, extinguished, not indeed in the body of the people, but in those classes which were most actively engaged in politics, almost all national feelings. Charles II. and many of his courtiers had passed a large part of their lives in banishment, serving in foreign armies, living on the bounty of foreign treasuries, soliciting foreign aid to re-establish monarchy in their native country. The oppressed Cavaliers in England constantly looked to France and Spain for deliverance and revenge. Clarendon censures the continental governments with great bitterness for not interfering in our internal dissensions. During the Protectorate, not only the Royalist, but the disaffected of all parties, appear to have been desirous of assistance from abroad. It is not strange, therefore, that, amidst the furious contests which followed the Restoration, the violence of party feeling should produce effects which would probably have attended it even in an age less distinguished by laxity of principle and indelicacy of sentiment. It was not till a natural death had terminated the paralytic old age of the Jacobite party, that the evil was completely at an end. The Whigs long looked to Holland, the High Tories to France. The former concluded the Barrier Treaty; some of the latter entreated the Court of Versailles to send an expedition to England. Many men who, however erroneous their political notions might be, were unquestionably honourable in private life, accepted money without scruple from the foreign powers which were favourable to the Pretender.

Never was there less of national feeling among the higher orders

than during the reign of Charles II. That prince, on the one side, thought it better to be the deputy of an absolute king than the king of a free people. Algernon Sydney, on the other hand, would gladly have aided France in all her ambitious schemes, and have seen England reduced to the condition of a province, in the wild hope that a foreign despot would assist him to establish his darling republic. The King took the money of France to assist him in the enterprise which he meditated against the liberty of his subjects, with as little scruple as Frederic of Prussia or Alexander of Russia accepted our subsidies in time of war. The leaders of the Opposition no more thought themselves disgraced by the presents of Louis, than a gentleman of our own time thinks himself disgraced by the liberality of powerful and wealthy members of his party who pay his election bill. The money which the King received from France had been largely employed to corrupt members of Parliament. The enemies of the Court might think it fair, or even absolutely necessary, to encounter bribery with bribery. Thus they took the French gratuities, the needy among them for their own use, the rich probably for the general purposes of the party, without any scruple. If we compare their conduct, not with that of English statesmen in our own time, but with that of persons in those foreign countries which are now situated as England then was, we shall probably see reason to abate something of the severity of censure with which it has been the fashion to visit those proceedings. Yet, when every allowance is made, the transaction is sufficiently offensive. It is satisfactory to find that Lord Russell stands free from any imputation of personal participation in the spoil. An age so miserably poor in all the moral qualities which render public characters respectable, can ill spare the credit which it derives from a man, not indeed conspicuous for talents or knowledge, but honest even in his errors, respectable in every relation of life, rationally pious, steadily and placidly brave.

The great improvement which took place in our breed of public men is principally to be ascribed to the Revolution. Yet that memorable event, in a great measure, took its character from the very vices which it was the means of reforming. It was assuredly a happy revolution, and a useful revolution; but it was not, what it has often been called, a glorious revolution. William, and William alone, derived glory from it. The transaction was, in almost every part, discreditable to England. That a tyrant who had violated the fundamental laws of the country, who had attacked the rights of its greatest corporations, who had begun to persecute the established religion of the state, who had never respected the law either in his superstition or in his revenge, could not be pulled down without the aid of a foreign army, is a circumstance not very grateful to our national pride. Yet this is the least degrading part of the story. The shameless insincerity, the warm assurances of general support which James received, down to the moment of general desertion, indicate a meanness of spirit and a looseness of morality most disgraceful to the age. That the enterprise succeeded; at least that it succeeded without bloodshed or commotion, was principally owing to an act of ungrateful perfidy, such as no soldier had ever before

committed, and to those monstrous fictions respecting the birth of the Prince of Wales, which persons of the highest rank were not ashamed to circulate. In all the proceedings of the Convention, in the conference particularly, we see that littleness of mind which is the chief characteristic of the times. The resolutions on which the two Houses at last agreed were as bad as any resolutions for so excellent a purpose could be. Their feeble and contradictory language was evidently intended to save the credit of the Tories, who were ashamed to name what they were not ashamed to do. Through the whole transaction no commanding talents were displayed by any Englishman; no extraordinary risks were run; no sacrifices were made for the deliverance of the nation, except the sacrifice which Churchill made of honour, and Anne of natural affection.

It was in some sense fortunate, as we have already said, for the Church of England, that the Reformation in this country was effected by men who cared little about religion. And, in the same manner, it was fortunate for our civil government that the Revolution was in a great measure effected by men who cared little about their political principles. At such a crisis, splendid talents and strong passions might have done more harm than good. There was far greater reason to fear that too much would be attempted, and that violent movements would produce an equally violent reaction, than that too little would be done in the way of change. But narrowness of intellect and flexibility of principle, though they may be serviceable, can never be respectable.

If in the Revolution itself there was little that can properly be called glorious, there was still less in the events which followed. In a church which had as one man declared the doctrine of resistance unchristian, only four hundred persons refused to take the oath of allegiance to a government founded on resistance. In the preceding generation, both the Episcopal and the Presbytérian clergy, rather than concede points of conscience not more important, had resigned their livings by thousands.

The churchmen, at the time of the Revolution, justified their conduct by all those profligate sophisms which are called Jesuitical, and which are commonly reckoned among the peculiar sins of Popery, but which in fact are everywhere the anodynes employed by minds rather subtle than strong, to quiet those internal twinges which they cannot but feel and which they will not obey. As their oath was in the teeth of their principles, so was their conduct in the teeth of their oath. Their constant machinations against the government, to which they had sworn fidelity, brought a reproach on their order and on Christianity itself. A distinguished churchman has not scrupled to say, that the rapid increase of infidelity at that time, was principally produced by the disgust which the faithless conduct of his brethren excited in men not sufficiently candid or judicious to discern the beauties of the system amidst the vices of its ministers.

But the reproach was not confined to the Church. In every political party, in the Cabinet itself, duplicity and perfidy abounded. The very men whom William loaded with benefits, and in whom he reposed most confidence, with his seals of office in their hands, kept up

a correspondence with the exiled family. Orford, Carmarthen, and Shrewsbury were guilty of this odious treachery. Even Devonshire is not altogether free from suspicion. It may well be conceived that, at such a time, such a nature as that of Marlborough would riot in the very luxury of baseness. His former treason, thoroughly furnished with all that makes infamy exquisite, placed him indeed under the disadvantage which attends every artist from the time that he produces a masterpiece. Yet his second great stroke may excite wonder, even in those who appreciate all the merit of the first. Lest his admirers should be able to say, that at the time of the Revolution he had betrayed his King from any other than selfish motives, he proceeded to betray his country. He sent intelligence to the French court of a secret expedition intended to attack Brest. The consequence was that the expedition failed, and that eight hundred British soldiers lost their lives from the abandoned villany of a British general. Yet this man has been canonised by so many eminent writers, that to speak of him as he deserves may seem scarcely decent. To us he seems to be the very San Ciappelletto of the political calendar.

The reign of William III., as Mr. Hallam happily says, was the nadir of the national prosperity. It was also the nadir of the national character of England. During that period was gathered the rank harvest of vices, sown during thirty years of licentiousness and confusion; but it was also the seedtime of great virtues.

The press was emancipated from the censorship soon after the Revolution; and the Government immediately fell under the censorship of the press. Statesmen had a scrutiny to endure which was every day becoming more and more severe. The extreme violence of opinions had abated. The Whigs learned moderation in office; the Tories learned the principles of liberty in opposition. The parties almost constantly approximated, often met, sometimes crossed each other. There were occasional bursts of violence; but, from the time of the Revolution, those bursts were constantly becoming less and less terrible. The severity with which the Tories, at the close of the reign of Anne, treated some of those who had directed public affairs during the war of the Grand Alliance, and the retaliatory measures of the Whigs, after the accession of the House of Hanover, cannot be justified; but they were by no means in the style of the infuriated parties, whose alternate murders had disgraced our history towards the close of the reign of Charles II. At the fall of Walpole far greater moderation was displayed. And from that time it has been the practice, a practice not strictly according to the theory of our Constitution, but still most salutary, to consider the loss of office, and the public disapprobation, as punishments sufficient for errors in the administration not imputable to personal corruption. Nothing, we believe, has contributed more than this lenity to raise the character of public men. Ambition is of itself a game sufficiently hazardous and sufficiently deep to inflame the passions without adding property, life, and liberty to the stake. Where the play runs so desperately high as in the seventeeth century,

honour is at end. Statesmen, instead of being as they should be, at once mild and steady, are at once ferocious and inconsistent. The axe is for ever before their eyes. A popular outcry sometimes unnerves them, and sometimes makes them desperate; it drives them to unworthy compliances, or to measures of vengeance as cruel as those which they have reason to expect. A Minister in our times need not fear either to be firm or to be merciful. Our old policy in this respect was as absurd as that of the king in the Eastern Tales, who proclaimed that any physician who pleased might come to court and prescribe for his diseases, but that if the remedies failed the adventurer should lose his head. It is easy to conceive how many able men would refuse to undertake the cure on such conditions; how much the sense of extreme danger would confuse the perceptions, and cloud the intellect of the practitioner, at the very crises which most called for self-possession, and how strong his temptation would be, if he found that he had committed a blunder, to escape the consequences of it by poisoning his patient.

But in fact it would have been impossible, since the Revolution, to punish any Minister for the general course of his policy, with the slightest semblance of justice; for since that time no Minister has been able to pursue any general course of policy without the approbation of the Parliament. The most important effects of that great change were, as Mr. Hallam has most truly said, and most ably shown, those which it indirectly produced. Thenceforward it became the interest of the executive government to protect those very doctrines which an executive government is in general inclined to persecute. The sovereign, the ministers, the courtiers, at last even the universities and the clergy, were changed into advocates of the right of resistance. In the theory of the Whigs, in the situation of the Tories, in the common interests of all public men, the Parliamentary constitution of the country found perfect security. The power of the House of Commons, in particular, has been steadily on the increase. By the practice of granting supplies for short terms, and appropriating them to particular services, it has rendered its approbation as necessary in practice to all the measures of the executive government, as it is in theory to a legislative act.

Mr. Hallam appears to have begun with the reign of Henry VII., as the period at which what is called modern history, in contradistinction to the history of the middle ages, is generally supposed to commence. He has stopped at the accession of George III., "from unwillingness," as he says, "to excite the prejudices of modern politics, especially those connected with personal character." These two eras, we think, deserved the distinction on other grounds. Our remote posterity, when looking back on our history in that comprehensive manner in which remote posterity alone can, without much danger of error, look back on it, will probably observe those points with peculiar interest. They are, if we mistake not, the beginning and the end of an entire and separate chapter in our annals. The period which lies between them is a perfect cycle, a great year of the public mind.

In the reign of Henry VII., all the political differences which

had agitated England since the Norman conquest seemed to be set at rest. The long and fierce struggle between the Crown and the Barons had terminated. The grievances which had produced the rebellions of Wat Tyler and Jack Cade had disappeared. Villanage was scarcely known. The two Royal Houses, whose conflicting claims had long convulsed the kingdom, were at length united. The claimants whose pretensions, just or unjust, had disturbed the new settlement, were overthrown. In religion there was no open dissent, and probably very little secret heresy. The old subjects of contention, in short, had vanished; those which were to succeed had not yet appeared.

Soon, however, new principles were announced; principles which were destined to keep England during two centuries and a half in a state of commotion. The Reformation divided the people into two great parties. The Protestants were victorious. They again subdivided themselves. Political factions were engrafted on theological doctrines. The mutual animosities of the two parties gradually emerged into the light of public life. First came conflicts in Parliament; then civil war; then revolutions upon revolutions, each attended by its appurtenance of proscriptions, and persecutions, and tests; each followed by severe measures on the part of the conquerors; each exciting a deadly and festering hatred in the conquered. During the reign of George II., things were evidently tending to repose. At the close of it, the nation had completed the great revolution which commenced in the early part of the sixteenth century, and was again at rest. The fury of sects had died away. The Catholics themselves practically enjoyed toleration; and more than toleration they did not yet venture even to desire. Jacobitism was a mere name. Nobody was left to fight for that wretched cause, and very few to drink for it. The Constitution, purchased so dearly, was on every side extolled and worshipped. Even those distinctions of party which must almost always be found in a free state, could scarcely be traced. The two great bodies which, from the time of the Revolution, had been gradually tending to approximation, were now united in emulous support of that splendid Administration which smote to the dust both the branches of the House of Bourbon. The great battle for our ecclesiastical and civil polity had been fought and won. The wounds had been healed. The victors and the vanquished were rejoicing together. Every person acquainted with the political writers of the last generation will recollect the terms in which they generally speak of that time. It was a glimpse of a golden age of union and glory, a short interval of rest, which had been preceded by centuries of agitation, and which centuries of agitation were destined to follow.

How soon faction again began to ferment is well known. In the Letters of Junius, in Burke's Thoughts on the Cause of the Discontents, and in many other writings of less merit, the violent dissensions which speedily convulsed the country are imputed to the system of favouritism which George III. introduced, to the influence of Bute, or to the profligacy of those who called themselves the King's friends. With all deference to the eminent writers to whom we have

referred, we may venture to say that they lived too near the events of which they treated to judge correctly. The schism which was then appearing in the nation, and which has been from that time almost constantly widening, had little in common with those which had divided it during the reigns of the Tudors and the Stuarts. The symptoms of popular feeling, indeed, will always be in a great measure the same; but the principle which excited that feeling was here new. The support which was given to Wilkes, the clamour for reform during the American war, the disaffected conduct of large classes of people at the time of the French Revolution, no more resembled the opposition which had been offered to the government of Charles II., than that opposition resembled the contest between the Roses.

In the political as in the natural body, a sensation is often referred to a part widely different from that in which it really resides. A man whose leg is cut off fancies that he feels a pain in his toe. And in the same manner the people, in the earlier part of the late reign, sincerely attributed their discontent to grievances which had been effectually lopped off. They imagined that the prerogative was too strong for the Constitution, that the principles of the Revolution were abandoned, that the system of the Stuarts was restored. Every impartial man must now acknowledge that these charges were groundless. The proceedings of the Government with respect to the Middlesex election would have been contemplated with delight by the first generation of Whigs. They would have thought it a splendid triumph of the cause of liberty that the King and the Lords should resign to the lower House a portion of the legislative power, and allow it to incapacitate without their consent. This, indeed, Mr. Burke clearly perceived. "When the House of Commons," says he, "in an endeavour to obtain new advantages at the expense of the other orders of the state, for the benefit of the Commons at large, have pursued strong measures, if it were not just, it was at least natural, that the constituents should connive at all their proceedings; because we ourselves were ultimately to profit. But when this submission is urged to us in *a contest between the representatives and ourselves*, and where nothing can be put into their scale which is not taken from ours, they fancy us to be children when they tell us that they are our representatives, our own flesh and blood, and that all the stripes they give us are for our good." These sentences contain, in fact, the whole explanation of the mystery. The conflict of the seventeenth century was maintained by the Parliament against the Crown. The conflict which commenced in the middle of the eighteenth century, which still remains undecided, and in which our children and our grandchildren will probably be called to act or to suffer, is between a large portion of the people on the one side, and the Crown and the Parliament united on the other.

The privileges of the House of Commons, those privileges which, in 1642, all London rose in arms to defend, which the people considered as synonymous with their own liberties, and in comparison of which they took no account of the most precious and sacred principles of English jurisprudence, have now become nearly as odious as the

rigours of martial law. That power of committing which the people anciently loved to see the House of Commons exercise, is now, at least when employed against libellers, the most unpopular power in the Constitution. If the Commons were to suffer the Lords to amend money-bills, we do not believe that the people would care one straw about the matter. If they were to suffer the Lords even to originate money-bills, we doubt whether such a surrender of their constitutional rights would excite half so much dissatisfaction as the exclusion of strangers from a single important discussion. The gallery in which the reporters sit has become a fourth estate of the realm. The publication of the debates, a practice which seemed to the most liberal statesmen of the old school full of danger to the great safeguards of public liberty, is now regarded by many persons as a safeguard tantamount, and more than tantamount, to all the rest together.

Burke, in a speech on parliamentary reform, which is the more remarkable because it was delivered long before the French Revolution, has described, in striking language, the change in public feeling of which we speak. "It suggests melancholy reflections," says he, "in consequence of the strange course we have long held, that we are now no longer quarrelling about the character, or about the conduct of men, or the tenor of measures; but we are grown out of humour with the English Constitution itself; this is become the object of the animosity of Englishmen. This Constitution in former days used to be the envy of the world; it was the pattern for politicians; the theme of the eloquent; the meditation of the philosopher in every part of the world. As to Englishmen, it was their pride, their consolation. By it they lived, and for it they were ready to die. Its defects, if it had any, were partly covered by partiality, and partly borne by prudence. Now all its excellences are forgot, its faults are forcibly dragged into day, exaggerated by every artifice of misrepresentation. It is despised and rejected of men; and every device and invention of ingenuity or idleness is set up in opposition, or in preference to it." We neither adopt nor condemn the language of reprobation which the great orator here employs. We call him only as a witness to the fact. That the revolution of public feeling which he described was then in progress is indisputable; and it is equally indisputable, we think, that it is in progress still.

To investigate and classify the causes of so great a change would require far more thought, and far more space, than we at present have to bestow. But some of them are obvious. During the contest which the Parliament carried on against the Stuarts, it had only to check and complain. It has since had to govern. As an attacking body, it could select its points of attack, and it naturally chose those on which it was likely to receive public support. As a ruling body, it has neither the same liberty of choice, nor the same interest to gratify the people. With the power of an executive government, it has drawn to itself some of the vices, and all the unpopularity of an executive government. On the House of Commons above all, possessed as it is of the public purse, and consequently of the public sword, the nation throws all the blame of an ill-conducted war, of a blundering negotiation, of a disgraceful treaty, of an embarrassing commercial crisis. The delays of

the Court of Chancery, the misconduct of a judge at Van Diemen's Land, anything, in short, which in any part of the administration any person feels as a grievance, is attributed to the tyranny, or at least to the negligence, of that all-powerful body. Private individuals pester it with their wrongs and claims. A merchant appeals to it from the Courts of Rio Janeiro or St. Petersburg. A painter who can find nobody to buy the acre of spoiled canvas, which he calls a historical picture, pours into its sympathising ear the whole story of his debts and his jealousies. Anciently the Parliament resembled a member of opposition, from whom no places are expected, who is not required to confer favours and propose measures, but merely to watch and censure, and who may, therefore, unless he is grossly injudicious, be popular with the great body of the community. The Parliament now resembles the same person put into office, surrounded by petitioners whom twenty times his patronage would not satisfy, stunned with complaints, buried in memorials, compelled by the duties of his station to bring forward measures similar to those which he was formerly accustomed to observe and to check, and perpetually encountered by objections similar to those which it was formerly his business to raise.

Perhaps it may be laid down as a general rule that a legislative assembly, not constituted on democratical principles, cannot be popular long after it ceases to be weak. Its zeal for what the people, rightly or wrongly, conceive to be their interests, its sympathy with their mutable and violent passions, are merely the effects of the particular circumstances in which it is placed. As long as it depends for existence on the public favour, it will employ all the means in its power to conciliate that favour. While this is the case, defects in its constitution are of little consequence. But, as the close union of such a body with the nation is the effect of an identity of interest, not essential but accidental, it is in some measure dissolved from the time at which the danger which produced it ceases to exist.

Hence, before the Revolution, the question of Parliamentary reform was of very little importance. The friends of liberty had no very ardent wish for reform. The strongest Tories saw no objections to it. It is remarkable that Clarendon loudly applauds the changes which Cromwell introduced, changes far stronger than the Whigs of the present day would in general approve. There is no reason to think, however, that the reform effected by Cromwell made any great difference in the conduct of the Parliament. Indeed, if the House of Commons had, during the reign of Charles II., been elected by universal suffrage, or if all the seats had been put up to sale, as in the French Parliaments, it would, we suspect, have acted very much as it did. We know how strongly the Parliament of Paris exerted itself in favour of the people on many important occasions ; and the reason is evident. Though it did not emanate from the people, its whole consequence depended on the support of the people.

From the time of the Revolution the House of Commons has been gradually becoming what it now is, a great council of state, containing many members chosen freely by the people, and many others anxious to acquire the favour of the people ; but, on the whole, aristocratical in its temper and interest. It is very far from being an illiberal and

stupid oligarchy ; but it is equally far from being an express image of the general feeling. It is influenced by the opinion of the people, and influenced powerfully, but slowly and circuitously. Instead of outrunning the public mind, as before the Revolution it frequently did, it now follows with slow steps and at a wide distance. It is therefore necessarily unpopular ; and the more so because the good which it produces is much less evident to common perception than the evil which it inflicts. It bears the blame of all the mischief which is done, or supposed to be done, by its authority or by its connivance. It does not get the credit, on the other hand, of having prevented those innumerable abuses which do not exist solely because the House of Commons exists.

A large part of the nation is certainly desirous of a reform in the representative system. How large that part may be, and how strong its desires on the subject may be, it is difficult to say. It is only at intervals that the clamour on the subject is loud and vehement. But it seems to us that, during the remissions, the feeling gathers strength, and that every successive burst is more violent than that which preceded it. The public attention may be for a time diverted to the Catholic claims or the Mercantile code ; but it is probable that at no very distant period, perhaps in the lifetime of the present generation, all other questions will merge in that which is, in a certain degree, connected with them all.

Already we seem to ourselves to perceive the signs of unquiet times, the vague presentiment of something great and strange which pervades the community, the restless and turbid hopes of those who have everything to gain, the dimly hinted forebodings of those who have everything to lose. Many indications might be mentioned, in themselves indeed as insignificant as straws ; but even the direction of a straw, to borrow the illustration of Bacon, will show from what quarter the hurricane is setting in.

A great statesman might, by judicious and timely reformations, by reconciling the two great branches of the natural aristocracy, the capitalists and the landowners, and by so widening the base of the government as to interest in its defence the whole of the middle class, that brave, honest, and sound-hearted class, which is as anxious for the maintenance of order and the security of property, as it is hostile to corruption and oppression, succeed in averting a struggle to which no rational friend of liberty or of law can look forward without great apprehensions. There are those who will be contented with nothing but demolition ; and there are those who shrink from all repair. There are innovators who long for a President and a National Convention ; and there are bigots who, while cities larger and richer than the capitals of many great kingdoms, are calling out for representatives to watch over their interests, select some hackneyed jobber in boroughs, some peer of the narrowest and smallest mind, as the fittest depositary of a forfeited franchise. Between these extremes their lies a more excellent way. Time is bringing round another crisis analogous to that which occurred in the seventeenth century. We stand in a situation similar to that in which our ancestors stood under the reign of James I. It will soon again be necessary to reform that we

may preserve, to save the fundamental principles of the Constitution by alterations in the subordinate parts. It will then be possible, as it was possible two hundred years ago, to protect vested rights, to secure every useful institution, every institution endeared by antiquity and noble associations, and, at the same time, to introduce into the system improvements harmonizing with the original plan. It remains to be seen whether two hundred years have made us wiser.

We know of no great revolution which might not have been prevented by compromise early and graciously made. Firmness is a great virtue in public affairs; but it has its proper sphere. Conspiracies and insurrections in which small minorities are engaged, the outbreakings of popular violence unconnected with any extensive project or any durable principle, are best repressed by vigour and decision. To shrink from them is to make them formidable. But no wise ruler will confound the pervading taint with the slight local irritation. No wise ruler will treat the deeply-seated discontents of a great party, as he treats the fury of a mob which destroys mills and power-looms. The neglect of this distinction has been fatal even to governments strong in the power of the sword. The present time is indeed a time of peace and order. But it is at such a time that fools are most thoughtless and wise men most thoughtful. That the discontents which have agitated the country during the late and the present reign, and which, though not always noisy, are never wholly dormant, will again break forth with aggravated symptoms, is almost as certain as that the tides and seasons will follow their appointed course. But in all movements of the human mind which tend to great revolutions, there is a crisis at which moderate concession may amend, conciliate, and preserve. Happy will it be for England if, at that crisis, her interests be confided to men for whom history has not recorded the long series of human crimes and follies in vain.

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